

Bail Slip

The appellant/single accused viz. Arumugam, S/o Krishnapillai aged 27 years , was released on bail vide order dt 30.07.2018 in MP.NO.1/08 IN CRL A.NO.519/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 05.02.2018
DELIVERED ON : 19.11.2018
CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Criminal Appeal No.519 of 2008

Arumugam
Accused

...Appellant/Single

Vs

State rep. by Inspector of Police,
Ananthapuram Police Station,
Villupuram District.
Crime No.95 of 2006.

...Respondent/Complainant

Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Additional District and Sessions Judge, Fast Track Court No.II, Tindivanam in S.C.No.64 of 2008 by its judgment dated 19.06.2008 convicted the appellant and sentenced him to undergo 6 months R.I. for the offence under Section 323 of IPC, sentenced him to undergo 2 years R.I. for the offence under Section 324 of IPC and sentenced him to undergo 10 years R.I. and to pay a fine of Rs.2,000/- I/d 3 months S.I. for the offence under Section 304(ii) of IPC and sentences order to run concurrently.

For Appellant : Mr.Palaninathan
for Mr.C.D.Johnson

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

The Appellant filed this Criminal Appeal against the judgment and order passed by the Learned Additional District and Sessions Judge cum Fast Track Court II , Tindivanam in S.C.No.64 of 2008 dated 19.6.2008 wherein the learned Trial Judge convicted the Appellant and sentenced

him to undergo six months rigorous imprisonment for the offence u/s 323 of IPC, sentenced to undergo two years rigorous imprisonment for the offence of section 324 of IPC and sentenced him undergo 10 years rigorous imprisonment for the offence u/s 304 (ii) of IPC and imposed a fine of Rs.2,000/- in default to undergo 3 months simple imprisonment and ordered all the sentences to run concurrently.

2. The case of the prosecution is that there was a prior enmity of using the field bund in border of their lands between the Appellant and PW1 Kannan Gounder. On 27.8.2006 at about 7.00 AM, PW1 Kannan Gounder, PW 2 Kumar and one Muruga Gounder (Deceased) questioned the Appellant for erasing the field bund in the land. The Appellant scolded them and attacked PW1 with Manvetti on his head, right chest right, upper arm, near right ear and caused simple injuries and the Appellant also assaulted Muruga Gounder with Manvetti on his right index finger, right shoulder and kicked him, due to which he fell down and sustained fracture in neckbone. Further the Appellant again attacked the Muruga Gounder using Manvetti handle on his right thigh and right knee and on seeing the incident; PW 2 Kumar separated both and pacified them. The Appellant in turn assaulted PW 2 on his back head, right dorsum and ran away. Muruga Gounder, PW1 Kannan and PW 2 Kumar were taken to the Gingee Hospital. PW1 Kannan and Muruga Gounder were referred to the Pondicherry Government Hospital and later at 3.30 PM Muruga Gounder died in the Hospital.

3. PW 11 Kaliyamurthi, the Sub Inspector of Police, on receiving wireless message at 11 A.M from Gingee Police Station, went to Gingee Government Hospital and received complaint from PW 1 who was undergoing treatment and the complaint is Exhibit P1, registered the case in Crime No 95/06 u/s 294(b) 324, 506(2) IPC and the printed FIR is Exhibit P 16. PW 11 inspected the place of occurrence, prepared the mahazar and sketch in the presence of witnesses and the sketch is Exhibit P17. Then he enquired PW2, PW3 and PW6 Venkatesan and recorded their statements. At 15.00 hours, arrested the appellant/accused at Thenputhupattu bus stop and remanded him to judicial custody. At about 18.10 hours, received information from Pondicherry Government Hospital that Muruga gounder succumbed to the injuries and altered the section to 302 of IPC, alteration report is Exhibit P 18. PW 12 Sankareswaran, the Inspector, took up the case for further investigation, received the case records on 27.8.2006 at 10 P.M went to Pondicherry Government Hospital and on 28.8.06 from 8.30 am to 10.30 am conducted inquest on the dead body

of Muruga gounder in the presence of Panchatyars and other witnesses and the inquest report is Exhibit P19.

4. PW10 is Dr Ponnappan, examined Muruga gounder aged 60 years, was brought by PW 4 Sahadevan, stated that about 4 known persons assaulted him with Kathi, Thadi on 27.8.06 at 5 A.M at his house. On examination there were

1. Lacerated injury on left index finger of 5 x ½ x ½ c.m
2. A lacereated injury of 7 x 1 x 1 cm on right fore arm
3. A lacerated injury on right should of 5 x ½ x ½ cms
4. Contusion on left shoulder
5. Contusion on right knee

5. He was admitted and referred to Pondicherry Government Hospital. On the same day at 10 A.M Kumar was brought by PW4 Sahadevan, who stated that 3 known persons assaulted him with Kathi and Thadi at 7.00 a.m. in the fields. On examination,

1. A lacerated injury of 5 x ½ x ½ cm in right hand above the ring finger
2. A lacerated injury of 5 x 2 x 1 cm on back head
3. Contusion of 2 x 2 c.m. on right elbow

Doctor opined as simple injuries and the accident register is Exhibit P14.

6. On the same day at 9.30 A.M. Kannan aged 65 years was brought by Sagadevan stating 3 known persons assaulted with Kathi on 27.8.06 at 7.00 a.m. in the Paddy fields. On examination there were

1. Lacerated injury on the front lateral part of head of 10x1x1 cm
2. Laceration on the left with 7x1x1 cm
3. Laceration on right side in front of ear pinna of 2x1x1/2 cms

7. PW5 Dr. Balaraman, who conducted post mortem of Muruga gounder on 28.8.2006 found the following injuries;

- i) Cut injury on the right should of 3x1/2x1/2 cm
- ii) A sutured wound of 5 c.m. on right fore arm.
- iii) A sutured wound of 4 c.m. on left index finger

- iv) A contusion of left shoulder
- v) A contusion on right leg
- vi) A contusion on right leg.

8. On internal examination there was fracture of the bone between the 5th and 6th spinal chord bones. The viscus was sent for chemical analysis. The report revealed that there was no presence of poised or alcohol. On 21.4.07 gave the final report that the deceased died due to the fracture of the bone in the neck. The post mortem report is Exhibit P3. The viscera report is Exhibit P4. He gives the opinion that the injures 1 to 3 would have caused due to assault by Manvetti. The 4th and 5th injuries could have caused due to the assault by Manvetti's handle. The injuries 5 and 6 could have caused when kicked and fallen back with force.

9. On further investigation, PW 12 examined witnesses and recorded their statements. On 30.9.06 received the wound certificates of Kannan and Kumar from Gingee Government Hospital and completed the investigation on 26.10.06 and filed the Final Report against the appellant u/s 323, 326 and 302 IPC.

10. The Learned Trial Court framed three charges against the appellant as follows:

- i. First Charge - under Section 326 of IPC.
- ii. Second Charge- under Section 302 of IPC
- iii. Third Charge - under Section 324 of IPC.

11. In order to bring home the charges, the prosecution examined PWs 1 to 13 and marked Exhibits P1 to P20 with M.Os.1 and 2. When the appellant/accused was examined under Section 313 of Cr.P.C. with reference to the incriminating piece of evidence appearing against him, he simply denied as false. The appellant did not choose to examine any witness and Exhibit D1 alone was marked on his side.

12. The Learned Additional Sessions Judge carefully examined the entire evidence and came to the definite conclusion that the appellant had caused the injury to the deceased Muruga Gounder which proved fatal. The defense version has not been accepted by the learned Additional

Sessions Judge. The learned Additional Sessions Judge further observed that the attack made by the appellant is without the intention of causing death and altered the conviction from Sections 302 to 304(II) of IPC.

13. Heard the learned counsel for the appellant / accused as well as the learned Additional Public Prosecutor for the State and gone through the evidence of the witnesses as well as the Judgment of the Court below and the materials on record.

14. The Learned Counsel for the Appellant after taking all the relevant evidence and materials has raised the following contentions:

a) The statements of eye witnesses are contradictory to each other on all material particulars.

b) The Court below failed to note that the occurrence is said to have taken place at about 7.00 A.M and the complaint was received by PW 11 at about 11.00 A.M at the Government Hospital, Gingee from PW 1 and there is an inordinate delay of 3 hours in giving the complaint. The above fact would go to show that the Ex P1 complaint was given only after due discussions and deliberations.

c) The Court below erred in convicting the Appellant u/s 304 (ii) of IPC while acquitting the Appellant/Accused from the charge u/s 302 of IPC. The conviction u/s 304(ii) of IPC is not all proved by the prosecution beyond all reasonable doubts.

d) The Court below failed to note that there is a land dispute existing between the prosecution party and Accused party for the past 2 years. The above fact would go to show that there are possibilities for the prosecution witness to speak against the Appellant/Accused and the Court below ought to have examined the evidence of the prosecution witnesses with due care and caution.

e) The Court below failed to note that the incident took place in an open place and the prosecution party also claims that some of the neighboring land owners came to their rescue. But the prosecution failed to examine any independent witnesses to speak about the actual occurrence and the above fact would go to show that apart from the interested witnesses no independent witness was examined in the present case.

f) The Court below failed to note that PW10 Doctor who treated the deceased at Government Hospital, Gingee has categorically stated in his evidence that the deceased

himself has stated that "he was attacked by 4 known persons with Kathi and Thadi at his house", the same was noted by the doctor in Accident Report. The prosecution in order to burke this important piece of evidence conveniently evaded in marking the Accident Register Report. The vigilant defence marked the same as defence documents as Ex D1. The above fact would clearly go to show that the prosecution suppressed the genesis of occurrence.

g) The Court below failed to note that the PW1 and PW2 who were also the injured eyewitness before PW 10 Doctor has categorically staged that they were attacked by 3 known persons with Kathi and Thadi and the same is reflected in Accident Register which is marked as Ex P14 and Ex P15. The Court below was wrong in holding that the injured witnesses due to pain and agony would have given such a statement. The above finding is contrary to Ex P14 and Ex P15 which categorically say that the injuries sustained by PW1 and PW2 are simple in nature and therefore there is no question of undergoing pain and agony which led them such a statement before Doctor PW 10.

h) The Court below failed to note that the present prosecution version is that the Appellant used Spade (Manvetti) in the attacking the deceased. PW1 and PW2 all of them gave a statement before the Doctor PW10 they have assaulted by Kathi and Thadi. The above fact would clearly establish the prosecution was desperate in pinning down the Appellant in order to settle the score in a civil dispute which was already existed.

i) The Court below failed to give any proper finding in respect of Post Mortem Report Exhibit P3. In Exhibit P3 the cause of death is only because of the fracture of neck bone. Even admitting the case of prosecution as true, the deceased was neither attacked by the Appellant in his neck nor he caused any injuries with the weapon in his hand he had.

15. On the contrary, the Learned Counsel for the Respondent opposed the contentions raised on behalf of the Appellant and contended that the evidences of eye witnesses was not shaken and supported the findings of the Learned Trial Court.

16. The point for consideration in this case is, Whether the trial court is right in convicting the accused based on the evidence of the injured eye witness?

17. In this case, PW1 is the owner of the neighboring land of the appellant/accused. It is established by the evidence of PW1 that already there was a dispute with regard to the land field bund which was later measured and

surveyed by the surveyor. About one and half years before, the appellant is said to have drive the tractor and reached the existing field bund. He was having Manvetti in his hand. When PW 1 questioned as to why he was erasing the Varappu, the appellant assaulted with Manvetti on his head and right hand and caused injuries. When Muruga gounder came there to question him, the appellant by using abusive language cut him on his right shoulder and on hands. He also kicked him, due to which Muruga Gounder fell down. Again by using Manvetti handle, assaulted on his private part, when Kumar PW2 has come there, the appellant assaulted PW 2 on his right index finger, head with the same weapon. Thus PW1 and PW2 are the injured eye witnesses in this case, whose evidences are corroborated with each others. Even PW3 has stated similar facts and the weapon stated to have been used by the appellant is Manvetti. Later PW4 Sahadevan, taken the injured to Gingee Govt.Hospital. PW10 Dr.Ponnappan, who examined the injured, has stated that Muruga Gounder was brought at 9.45 AM on 27.8.2006 by PW4 and on examination has found the external injuries and as he was vomiting, referred to Pondicherry Government Hospital. On examining PW2 Kumar, he found the injuries to be simple in nature and treated him. On examining, PW1 Kanna Gounder, there has been fracture of 7th rib and neck of scapula on the right and considering them to be grievous injuries, sent him for further treatment to Pondicherry Government Hospital. Thus according to him, PW1 and Muruga Gounder sustained grievous injuries and PW2 has sustained simple injuries. It is also admitted by PW10 that these injuries sustained by them could have caused by Manvetti and its handle. On perusal of Exhibit P1 statement given by Kanna gounder to the Police, it is evident that the Appellant assaulted them with Manvetti. In this case MO2 Manvetti has been recovered from the house of Appellant handed over by him as per the admissible portion of the confession statement. The seizure Manvetti MO2 is established through the seizure mahazar witnesses PW 8 Vasudevan and Jeyapaul. Thus the weapon used by the Appellant in the occurrence is established without any shadow of doubt in this case through corroborating evidence of the witnesses PW 2 to 4 and through the seizure.

18. The medical evidence of PW 5 Dr. Balaraman, who conducted post mortem of Muruga Gounder, conclusively opined that, he has died due to fracture of the neck bone between the 5th and 6th spine. PW1 and PW2 deposed in their evidences that the appellant kicked Muruga Gounder and he fell on the ground. Thus there is clear corroboration with respect to the finding of the medical evidence as per Exhibit P3.

19. It is trite law that the evidence of injured witness, being a stamped witness, is accorded a special status in law. This is as a consequence of the fact that injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness would not want to let actual assailant go unpunished.

20. The contradictions and variations in the testimonies of the aforesaid witnesses, in my considered view do not go to the root of the case and the substratum of the prosecution version remains undisturbed. It is to be borne in mind that both PW1 and 2 were present along with the deceased Muruga Gounder in the scene of occurrence. I have also gone through record of the case and have re-appreciated the evidence.

21. In the decision of Hari Obula Reddy v. State of A.P. reported in (1981) 3 SCC 675 the Hon'ble Apex Court has ruled that evidence of interested witnesses per se cannot be said to be unreliable evidence. Partisanship by itself is not a valid ground for discrediting or discarding sole testimony. We may fruitfully reproduced a passage from the said authority:-

"An invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

The principles that have been stated in number of decisions are to the effect that evidence of an interested witness can be relied upon if it is found to be trustworthy and credible. Needless to say, a testimony, if after careful scrutiny is found as unreliable and improbable or suspicious it ought to be rejected. That apart, when a witness has a motive or makes false implication, the Court before relying upon his testimony should seek corroboration in regard to material particulars. In the instant case, the witnesses who have deposed against the accused persons are close relatives and had suffered injuries in the occurrence. Their presence at the scene of occurrence

cannot be doubted, their version is consistent and nothing has been elicited in the cross-examination to shake their testimony. There are some minor or trivial discrepancies, but they really do not create a dent in their evidence warranting treating the same as improbable or untrustworthy. In this context, it is requisite to quote the observations made by the Hon'ble Supreme Court in State of Punjab v. Jagir Singh reported in (1974) 3 SCC page 277 observed that

"A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

22. Tested on the backdrop of aforesaid enunciation of law, I am unable to accept the submission of the learned counsel for the appellant that the learned Trial Court has fallen into error by placing reliance on the evidence of the prosecution witnesses namely PWs.1 to 3. Additionally, I may note with profit that these witnesses had sustained injuries and their evidence is cogent and reliable. The Hon'ble Supreme Court in many number of cases discussed the reliability of the injured witness in the criminal trial and held that "A testimony of injured witness stands on a higher pedestal than other witnesses".

23. From the aforesaid summarization of the legal principles, it is beyond doubt that the testimony of the injured witness has its own significance and it has to be placed reliance upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and inconsistencies. As has been stated, the injured witness has been conferred special status in law and the injury sustained by him is an inbuilt-guarantee of his presence at the place of occurrence. Thus perceived, I

really do not find any substance in the submissions of the learned counsel for the appellant.

24. The next question to be considered by this Court is;

Whether the learned Trial Court is right in altering the Conviction of the appellant for the offence under Section 302 of IPC to Section 304(II) of IPC?

In the case of Pappu v. State of M.P. reported in (2006) 7 SCC 391, the Hon'ble Apex Court observed as under:

".....The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300 IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'. It cannot be laid down as a rule of universal application that whenever one blow is given, Section 302 IPC is ruled out. It would depend upon the weapon used, the size of it in some cases, force with which the blow was given, part of the body it was given and several such relevant factors. Considering the factual background in the case at hand it will be appropriate to convict the appellant under Section 304 Part II IPC, instead of Section 302 IPC as has been done by the trial court and affirmed by the High Court. Custodial sentence of eight years would meet the ends of

justice. The appeal is allowed to the aforesaid extent."

25. The learned Trial Court considering the evidences on record, altered the conviction from section 302 of IPC to 304(II) of IPC. The findings of the learned Judge "that the death of Muruga Gounder is due to the kick made by the accused in the occurrence and it is also proved by the evidences that though he caused the injuries on them with Manvetti, in the quarrel, when he kicked Muruga gounder he would not have fore seen that, such kick would cause his death and there is no intention by the accused to cause the death of Muruga Gounder in the occurrence and the death of Muruga Gounder has been caused by the accused by kicking him, when fell has sustained fracture of neck bone that lead to this death and the same is not intentional or premeditated and would not have foreseen by the accused and the kicking act of the accused is done without any intention to cause death" is a sufficient ground in altering the conviction and the learned Judge applied her judicial mind. On consideration of the entire facts and circumstances of this case and while taking all the decided cases in consideration, in my opinion, it is a fit case in which the appellant conviction under Section 304 Part II of IPC is to be sustained.

26. In fine:

(a) this Criminal Appeal is dismissed, but with the following modification in the sentence imposed by the trial Court in S.C.No.64 of 2008 dated 19.6.2008 on the file of the learned Additional Sessions Judge-cum-Fast Track Court No-II, Tindivanam. The conviction of the appellant/accused under Section 304(ii) of IPC is confirmed and the sentence is modified to undergo 3 years Rigorous Imprisonment instead of 10 years Rigorous Imprisonment;

(b) the fine imposed by the trial Court will sustain;

(c) the learned trial Judge is directed to secure the accused to send to prison to undergo unexpended portion of the sentence. Set off is granted under Section 428 of Cr.P.C.

Sd/--

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Judicial Magistrate ,Gingee.

2.The Chief Judicial Magistrate,Villupuram

3.The Additional District and Sessions Judge,
Fast Track Court No.II,
Tindivanam.

4.The Superintendent ,Central Prison,Cuddalore.

5.The Inspector of Police,
Ananthapuram Police Station,
Villupuram dt.

6.The Public Prosecutor, High Court ,Madras.

7.The section officer,
Criminal Section,
High court
Madras

+lcc to Mr.Palaninathan , Advocate SR.No. 79361

Criminal Appeal No. 519 of 2008

ASK(21/12/2018)



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