

BAIL SLIP

The Petitioner/Accused No.1 namely Kannan, S/o, Periyasamy, (in S.C.No.33 of 2003 on 13.08.2003 on the file of the Additional Sessions Judge, Fast Track Court, Kallakurichi) was directed to be released on bail as per order of this Court dated 28.08.2003 made in CRL MP NO.7956/03 in CRL A NO.1273/03 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.1273 of 2003
and
Crl.R.C.No.1780 of 2003

Crl.A.No.1273 of 2003

Kannan Appellant/Accused No.1

Vs.

The State represented by the
Inspector of Police,
Kachirapalayam Police Station,
Villupuram District,
[Crime No.164/2000] Respondent/Complainant

Prayer:

Appeal filed under Section 374 of Cr.P.C. seeking to set aside the conviction and sentence imposed on the appellant/accused in S.C.No.33 of 2003 on 13.08.2003 by the learned Additional Sessions Judge, Fast Track Court, Kallakurichi.

For Appellant : Mr.A.Padmanabhan

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl. Side)

Crl.A.No.1780 of 2003

Ravichandran ... Petitioner

Vs.

1. Subban @ Subramaniyan
2. Ponnusamy
3. Ramesh
4. Periyasamy
5. Selvi
6. Thankayee
7. Kunasalee

... Respondents 1 to 7/
Accused 2 to 8

8. State by
Inspector of Police,
Kanchrapalayam Police Station,
Villupuram District,
(Crume No.164/2000)

... 8th Respondent/Complainant

Prayer:

Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code against the judgement of the learned Additional Sessions Judge, Fast Track Court at Kallakurichi, Villupuram District made in S.C.No.33 of 2003 dated 13.08.2003, acquitting the accused 2 to 8 / respondents 1 to 7 herein from the charges under Sections 147, 341, 302, 302 r/w 149 of IPC.

For Petitioner : No Appearance
For Respondents 1 to 7 : Mr.A.Padmanabhan
For 8th Respondent : Mr.R.Ravichandran
Government Advocate (Crl. Side)

C O M M O N J U D G M E N T

The Criminal Appeal in Crl.A.No.1273 of 2003 has been filed by the appellant/A1 seeking to set aside the conviction and sentence imposed on him in S.C.No33 of 2003 on 13.08.2003 by the learned Additional Sessions Judge, Fast Track Court at Kallakurichi, Villupuram District.

2. The Criminal Revision in Crl.R.C.No1780 of 2003 has been filed by the de-facto complainant/PW1 challenging the acquittal against A2 to A8/respondents 1 to 7.

3.The appellant was charged for the offence under Sections 147, 302 of IPC. After trial, the appellant/A1 was convicted for the offence under Section 304(ii) of IPC instead of 302 of IPC and was sentenced to undergo Rigorous Imprisonment for 9 years for the offence under Section 304(2) of IPC. The period of sentence already undergone by appellant/accused was ordered to be set off under Section 428 Cr.P.C. Aggrieved by the said conviction and sentence, the appellant/ accused has filed the present appeal.

4. The case of the prosecution in brief is as follows:

The appellant/accused is the cousin brother of DW1 Sumathy and son of A5 and A7. The deceased Gunasekaran is neighbour of DW1. Prior to 15 days from the date of occurrence, when one Deivasamy, who is a widower approached the father of DW1 and conveyed his wishes to marry his daughter, he refused, due to which, the said Deivasamy informed the DW1 that if she would not marry him, he will spoil her name as if she had illicit intimacy with him and hence, the DW1 informed the same to her parents. Thereafter, on 25.04.2000 at 7.45 a.m, the appellant along with other accused persons unlawfully assembled in front of the deceased house and just opposite to the shop of PW5-Kuppammal and abused the said Deivasamy in filthy language who was interested to marry DW1 and it was questioned by the deceased Gunasekaran. Thereby, the accused got annoyed against the deceased person, joined together and attacked the deceased person. In that process, A2, A3 and A4 caught hold of the deceased shirt and A1 blew the button knife on his chest and thereby caused stab injuries. Immediately, the deceased was taken to hospital for treatment at Kallakurichi, where he was declared as dead. In respect of which, PW1 lodged a complaint and the same was marked as Ex.P1.

5. PW1 is the brother of the deceased person. He deposed that the accused persons assembled in front of PW5's shop and abused one Deivasamy in filthy language and the same was questioned by his deceased brother Gunasekaran, thereby A1 blew with knife on his chest and the deceased sustained grievous injuries and he was taken to hospital, where he was declared as dead. The allegations against the other accused persons are that they caught hold of the deceased Gunasekaran and facilitated A1 to commit murder of his brother. In the cross examination of PW1, he deposed that there is no previous enmity between the two families. However, his brother was murdered by A1 with an intention.

6. PW2 is the Medical Officer attached with Kallakurichi Government Hospital who conducted the post-mortem and he deposed that there was a stab injury on the chest of the deceased with 3 x 2 cm length and 7 cm depth. The post-mortem further reveals that the lungs were torn and the blood was spread in and around the lungs upto mid-chest which led to death of the deceased person. In his cross examination, PW2 has clearly stated that there was a stab injury which led to death. However, the other injuries may occur due to fall on the floor.

7. PW3 who is the Forensic Lab Assistant in his evidence confirmed the post-mortem and filed the forensic report Ex.P4.

8. PW4, one more eye witness, who was examined in support

of the prosecution case, has deposed that one Deivasamy was interested to marry DW1, who is the daughter of Ponnusamy and also stated that the deceased Gunasekaran and Deivasamy came out from the house of the deceased and the said Deivasamy entered into a quarrel with DW1 Sumathy. His evidence further revealed that the said Deivasamy shouted the DW1 that he is going to marry even without her volition. Accordingly, he pulled her hand and the deceased Gunseakaran caught hold of her hand, thereby DW1 bitten the hand of the Deivasamy. However, he caught hold of her. The relatives and other persons assembled there to rescue the DW1 from Gunasekaran and Deivasamy. In that process, A1 attacked the deceased with button knife and blew on his chest, thereby the deceased sustained fatal injuries and he was taken to hospital where he was declared as dead. PW4's evidence further reveals that PW1 was not available at the time of scene of occurrence and on hearing the scream made by the DW1, he rushed to the spot and found that his brother sustained fatal injuries, nearby a tap.

9. PW5 Kuppammal who is the owner of the bunk shop corroborated the evidence of PW1. The entire incident was happened in front of her house. During the cross examination, she admitted that the other accused persons are residents of Chennai. Whenever the temple functions, marriage and other functions happens, they used to visit the village and she has also confirmed that there is no previous enmity in between the two families.

10. PW6, the Sub Inspector of Police deposed that he has conducted further investigation and recorded the statement of other witnesses and laid a charge sheet.

11. PW7, Chellasamy who is the father of the deceased and PW1/Ravichandran, deposed that he did not know about the said occurrence and his evidence is hearsay one. PW8 is the attesting witness of observation mahazar.

12. PW10, the Head Constable of Police has deposed that he has received the dead body from the hospital and handed over the same to the relatives. PW11, the Head Constable of Police deposed that on receipt of complaint, he has registered the FIR and handed over the case records for further investigation to the Inspector of Police, Kallakurichi. PW12, the Investigating Officer has deposed that he has conducted the investigation and recorded the statement of prosecution witnesses and after completion of investigation, filed a final report as against the accused persons under Sections 147, 148, 341, 324, 323, 302 of IPC. He narrated the investigation before the court during his chief examination. On perusal of his chief examination, it reveals that he arrested the accused persons viz., A2, A6, A5,

A7 and A8 who caught hold the deceased person and facilitated the A1 to blow the knife on the chest of the deceased person.

13. The learned Additional Sessions Judge, Fast Track Court, Kallakurichi framed charges against the appellant/1st accused for the offences punishable under Sections 147 and 302 of IPC and the same was read over and explained to the accused in Tamil. A1 pleaded not guilty. Thereafter, trial was proceeded against the accused.

14. The prosecution examined 12 witnesses as P.W.1 to P.W.12 and marked exhibits Ex.P1 to Ex.P9. When the accused was questioned under Section 313 Cr.P.C., they denied their complicity in the crime. One witness was examined as DW1 on the side of the defence, however, no document was marked.

15. The evidence of DW1 is corroborated with the evidence of PW4, who is the eye witness in the present case. On a perusal of DW1's evidence, it reveals that prior to 4 days of the occurrence, one Deivasamy who is a widower with two children approached the DW1's father for the purpose of marrying the DW1. The father of the DW1 had refused to give her daughter in marriage to the said person. So, he threatened her if she does not marry him, he will spread the rumour as if she had illegal intimacy with him. Immediately, the said threaten was conveyed to her parents and thereafter, on 25.04.2000, in the morning at 6.30 a.m, DW1 came out from her house with a vessel to draw water in the public tap. When she turned towards west, the said Deivasamy caught hold of her hand and said that he is going to tie a thali to her. Immediately, the deceased Gunasekaran caught hold of her hair and hand. However, in order to relieve her, she had bitten the said Deivasamy. However, she tried to relieve her from the hands of Gunasekaran and screamed seeking the help of other, thereby the family members viz., A1 to A8 came to the spot in order to safeguard the DW1. However, she hold the door, even then, Gunasekaran and Deivasamy pulled her hand, thereby she had bitten Deivasamy. A1 came from his house and blew the button knife on the chest of the deceased Gunasekaran in order to relieve the DW1. However, DW1 denied the participation of other accused persons and the same was confirmed from her cross examination.

16. Though after elaborate trial, the trial Judge arrived a conclusion that A1 did not commit any offence as alleged by the prosecution under Section 302 of IPC, he converted the offence under Section 304 (ii) of IPC and imposed a punishment of 9 years rigorous imprisonment.

17. The learned counsel for the appellant would submit that there are several inconsistent statements made by the

prosecution witnesses. Even comparison of PW1 and PW4's evidence, PW4 has categorically denied the presence of PW1 and he is not an eye witness. Since PW1 is the brother of deceased Gunasekaran, he made false allegations against the accused persons. PW4 has clearly deposed the presence of Deivasamy and Gunasekaran in the scene of occurrence and they jointly dragged the DW1 to Gunasekaran's house. In that process, in order to rescue DW1, the other family members A1 to A8 came to the spot. For private defence, A1 blew the button knife to the chest of the deceased Gunasekaran, thereby, he sustained fatal injuries and he died in the hospital. There is no intention to commit the murder as alleged by the prosecution. Believing the entire defence version, the trial Court converted the offence under Section 304(ii) of IPC without framing any separate charges and giving any opportunity and the trial Judge has misconceived the private defence by saying that already he has caused the death of a person. As per Fifth Clause of Section 100 IPC, the appellant/A1 has right of private defence when death is being caused and since the deceased Gunasekaran and Deivasamy abducted D.W.1, in order to rescue DW1 from the hands of the deceased Gunasekaran and Deivasamy, A1 and other accused gathered in the spot. In that process, without any intention, as a private defence, A1 blew the knife on the chest of the deceased Gunasekaran.

18. Per contra, the learned Government Advocate (Crl. Side) appearing for the State would submit that even during the trial, the accused defended the case as if they have committed the offence under Section 304(ii) of IPC and not under Section 302 of IPC. However, based on the entire evidence and on a perusal of the evidence of PW4 and DW1 and also charges framed under Section 302 of IPC, it is seen that there are three eye witnesses in this case. The evidence of PW2/Doctor is corroborated by the evidence of PW1, PW4 and PW5. All the three witnesses viz., PW1, PW4 and PW5 clearly deposed that in order to private defence, the appellant/A1 committed murder with an intention to finish the life of Gunasekaran. Though Deivasamy was not available in the scene of occurrence, the accused persons gathered in front of Gunasekaran's house and abused the said Deivasamy. It was questioned by Gunasekaran, thereby, the accused persons joined together and committed the murder of the deceased person and the evidence of all these witnesses corroborated with each other. Right to private defence under Fifth Clause of Section 100 IPC is not applicable to the present case on hand. Though charges were framed against the accused persons under Section 302 of IPC including the appellant/A1, after elaborate trial, the trial Court converted the offence into one under Section 304(ii) of IPC and imposed punishment of 9 years rigorous imprisonment, which is perfectly correct and it need not be interfered with.

19. Heard the arguments advanced on either side and perused the materials placed on record.

20. In the light of the above submissions, it has to be analysed whether the prosecution has proved the guilt against the accused beyond reasonable doubt.

21. Admittedly, it is not in dispute as per the decision of the trial Court that on 25.04.2000, one Deivasamy was interested to marry DW1. However, his wish of marrying the DW1 was refused by DW1 as well as his father and other family members. In order to perform the marriage of DW1, the said Deivasamy and Gunasekaran went in front of her house at 6.30 a.m and the said Deivasamy tried to pull her hand and Gunsekarana pulled her hair and hand in order to drag the DW1 to the house of the deceased. Immediately, DW1 screamed and shouted for help. Thereby, all the family members gathered in order to rescue DW1 from the hands of Deivasamy and the deceased person. In that process, A1 blew the knife on the chest of the deceased person and he sustained fatal injuries and thereafter, when he was taken to hospital for treatment, where he was declared as dead. The said conclusion arrived by the trial Court is based on the evidence of PW4 and DW1.

22. The de-facto complainant/PW1 has filed a revision petition before this Court and stated that all the accused persons assembled in front of the petty shop and A1, abused Deivasamy with filthy language and when it was questioned by the deceased Gunasekaran, the other accused persons viz., A2 to A4 caught hold of the deceased person and facilitated A1 to commit murder. However, even as per the statement of PW1, he has categorically denied. The above said version is disproved by PW4. PW4 has clearly confirmed the defence theory, the presence of Deivasamy. Though, Deivasamy and Gunasekaran dragged the DW1, PW4 clearly deposed that at the time of scene of occurrence, PW1 was not available and after hearing the noise, he came to the spot and ascertained the incident. There is no corroboration in the evidence of PW1 and PW5. However, the evidence of PW4 and DW1 clearly corroborated each other. It is relevant to note that PW1 himself admitted that there is no previous enmity between two families. However, on a perusal of PW1 and PW5 there is lot of difference. There is no corroboration in the evidence of PW1 and PW5 and PW4 deposed completely different version of the prosecution case.

23. On a perusal of the entire evidence, it is clearly reveals that at 6.30 a.m, Deivasamy along with the deceased person quarrelled with the DW1 Sumathy for the purpose of marriage. After her screaming and shouting, the other family

members rushed to the spot. In that process, A1 blew single knife inflicted deep on the chest in a trivial quarrel resulting injury in the lungs and caused the death of the deceased. On the spur moment, A1 without any intention, in order to save his sister's life, from the hands of Deivasamy and the deceased Gunasekaran, he rescued and blew single knife. Even on a perusal of the entire evidence, it revealed that there is no intention for A1 to commit the murder of the deceased person and the evidences would clearly reveal that there is no intention to cause death or injury which led to fatal. Hence, the trial Court arrived the conclusion that conviction under Section 302 of IPC is not proper and hence, altered the charges under Section 304(ii) of IPC.

24. In view of the above, though the trial Court arrived a conclusion that the 1st accused has no intention to cause the death of the deceased person, the trial Court imposed punishment of 9 years Rigorous imprisonment against A1. In my view, the punishment is harsh and improper and on a perusal of entire records, it reveals that there is no intention to cause the death. However, there must be a punishment to the 1st accused. Hence, I am inclined to reduce the sentence of imprisonment from 9 years to 1 year.

25. I have considered the grounds in the Criminal revision petition.

26. In view of the findings given in the above criminal appeal, and on a perusal of entire records, it is seen that no oral or documentary evidence was adduced on the side of the prosecution for implicating the other accused persons, this Court is not inclined to interfere with the conclusion arrived by the trial Court in acquitting the accused viz., A2 to A8 in a mechanical manner and the trial Court, after elaborate trial came to a conclusion that the accused persons viz., A2 to A8 did not commit any offence as alleged by the prosecution and thereby acquitted them. No material was produced before the trial Court and even on a perusal of entire records and deposition of witnesses, no case is made out against the accused viz., A2 to A8 as alleged by the prosecution. In the similar circumstances, the Hon'ble Apex Court reported in (Hydrus Vs State of Kerala) (2004) 13 SCC 374 has held that an order of acquittal need not be interfere with by the Higher Courts unless there is any procedural irregularity or material evidence has been over looked or missed by the Lower Court.

27. Hence, I do not find any error in the judgment dated 13.08.2003 made in S.C.No.33 of 2003 by the learned Additional Sessions Judge, Fast Track Court, Kallakurichi.

28. In the result, the Criminal Appeal is partly allowed. The conviction is confirmed and the sentence imposed on the appellant/A1 for offence under Section 304(ii) is reduced from 9 years to one year. The period of sentence already undergone by appellant/accused shall be set off under Section 428 Cr.P.C. The trial Court is directed to take steps to secure the custody of A1 to undergo the remaining period of sentence, if any.

29. In the result, the Criminal Revision Petition is dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate, Kallakurichi.
 2. Do through The Chief Judicial Magistrate, villupuram.
 3. The Additional Sessions Judge,
Fast Track Court, Kallakurichi.
 4. Do through The Principal Sessions Judge, Villupuram.
 5. The Inspector of Police,
Kachirapalayam Police Station,
Villupuram District.
 6. The Direct General of Police,
Mylapore, Chennai 4.
 7. The District Collector, Villupuram.
 8. The Superintendent, Central Prison, Cuddalore.
 9. The Public Prosecutor, High Court, Madra.
 10. The Section Officer,
Criminal Section, High Court, Madras.
- +1 cc to M/s.A.Padmanaban, Advocate Sr.No.81513

Cr1.A.No.1273 of 2003
and Cr1.R.C.No.1780 of 2003

SKV(CO)
CSL/21.12.2018