

Bail slip

the appellants/accused namely 1. THIRUMURUGAN S/O.CHANDRAN, 2.MANVANNAN, S/O. CHANDRAN were directed to be released on bail in and of the order of this court dated 15.11.2017 in CRL MP.11611/2017 in CRL A. No.588 of 2017 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE C.T. SELVAM

AND

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Criminal Appeal No.588 of 2017

1. Thirumurugan

2. Manivannan : Appellants/Accused-1 & 2

Vs.

State: Represented by
The Inspector of Police
Kumarapalayam Police Station,
Cr.No.23 of 2015 : Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records in judgment dated 11.08.2017 made in S.C.No.22 of 2016 on the file of the learned Additional District and Sessions Judge, Namakkal and set aside the conviction and sentence thereon, thereby acquit the appellants.

For Appellant : Mr. Pitty Parthasarathy

For Respondent : Ms.M. Prabhavathi
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by N. SATHISH KUMAR, J.,]

The appeal is preferred against the conviction of the appellants under Sections 449 and 302 I.P.C. and sentencing them to undergo Life imprisonment for each offence for each accused and to pay a fine of Rs.1,000/- for each offence for each accused in default to undergo rigorous imprisonment of six months for each offence for each accused. The above sentences were ordered to run concurrently and the period of incarceration already undergone by the accused were ordered to be set off under Section 428 of Cr.P.C. Aggrieved over the above conviction, the present appeal came to be filed.

2. The prosecution case in nutshell is as follows:-

2.(a) The deceased is the husband of P.W.1. P.W.2 is the mother of P.W.1. P.W.3 is the sister of P.W.1 and daughter of P.W.2. P.W.4 is the cousin of the accused. P.W.5 is also relative of both P.W.1 and accused. P.W.6 is wife of P.W.5. P.W.7 to P.W.10 are neighbours of P.W.2. They are all known to P.W.1 daughter of P.W.2 and the deceased. The accused are the cousins of P.W.1. All are residing in Kumarapalayam village, Uthukaadu, Perunthurai Taluk. On 16.01.2015, P.Ws.1,2 and other witnesses went to the temple in their village. The deceased also went to the temple. However, P.W.3 did not accompany P.W.1 and others to the temple. The deceased asked P.W.1 as to why P.W.3 did not come to the temple, for which P.W.1 informed that as new dresses were not purchased for her, she did not come to the temple. Immediately, P.W.1 went to her house to bring back P.W.3. He pacified P.W.3 to take her to the temple. However, P.W.3 went to the house of P.W.6. When the accused went to the house of P.W.6 to take P.W.3 to the temple, both the accused being the cousin brothers of P.W.3 intervened and questioned the deceased as to why he is compelling P.W.3. As a result, the deceased took P.W.3 to her house. At that time the 1st accused took the wooden log and beat the deceased on head. 2nd accused also with the same wooden log beat the deceased on head, as a result the deceased fell down with pool of blood. The accused fled away from the scene of occurrence.

2.(b) Immediately, P.W.3 called her sister P.W.1 from the cell phone of P.W.5. P.W.1, P.W.2 and others immediately rushed to the place of occurrence and found that the deceased lying down with pool of blood. Immediately P.W.1 and her mother P.W.2 with the help of the others took the deceased to a private hospital at Kumarapalayam. From there they took the deceased to Erode and took a scan in a private hospital at Erode. As the

doctors expressed their inability to treat the deceased, they took the deceased to Coimbatore Government Hospital. After 3 days, the deceased succumbed to injuries in the hospital. In respect of the above occurrence, P.W.1 lodged Ex.P.1 with the police.

2.(c) P.W.4 also went to the temple along with P.W.1. On hearing the occurrence he rushed to the spot and took the deceased to the hospital. P.W.5 and P.W.6 husband and wife are also relatives of both sides, also seen the deceased compelling P.W.3 to go to temple. Immediately after the incident, P.W.5 called P.W.2 and took the deceased to the hospital. P.W.6 also seen both the accused came and intervened while the deceased was compelling P.W.3 to take her to the temple. P.W.7 and P.W.9 also seen both the accused and deceased fighting at the relevant point of time. P.W.13 Special Sub-Inspector of Police, received the complaint on 19.01.2015 from P.W.1 and registered the same in Cr.No.23 of 2015 under Sections 448 and 302 I.P.C. under Ex.P.18 and forwarded the same to the Court and superior officers. P.W.14 is the Medical Officer attached to the Coimbatore Government Hospital. On 16.01.2015 at about 8.45 p.m. he admitted the deceased in the hospital and found sutured wound on the left side head.

2.(d) P.W.16 Investigating Officer took up the investigation, went to the place of occurrence on 19.01.2015 and prepared observation mahazar Ex.P.13 in the presence of P.W.9 and P.W.10. He also drawn rough sketch Ex.P.12 and recorded the statement of witnesses. Thereafter he went to the hospital to record the statement of deceased. However, he could not record the statement of the deceased, since the deceased was not in a position to give statement. On 20.1.2015 he arrested both the accused at 9.00 a.m. in the presence of P.W.11 and one Kamaraj and recorded their confession statement. As per the admissible portion of the confession statement of A1, he recovered wooden log M.O.1. Thereafter, he sent the accused to the judicial custody and properties to the Court. After the receipt of death intimation from the hospital on 21.01.2015 he went to the hospital and conducted Inquest over the dead body and prepared Inquest Report Ex.P.17. He altered the crime from 448 and 307 I.P.C. to 448, 302 I.P.C. under alteration report Ex.P.15 and sent the alteration report to the Court. He gave requisition Ex.P.9 to the Medical Officer to conduct Post mortem. P.W.15 Medical Officer attached to Coimbatore Medical College Hospital conducted autopsy over the dead body and found the following injuries:

"Ante mortem injuries:

- Nail scratch mark 1.5 x 0.25 cm and 0.5 x 0.25 cm two in numbers noted over lateral aspect of left side neck and one in left side neck just below mandible. 1 x 0.25 cm noted over right side neck at the level of lower end of thyroid cartilage and 1 x 0.25 cm three in number noted over right side of neck at the level of thyroid cartilage.
- Partially healed inverted "V" shaped sutured wound 6 cm in length noted over right frontal region.
- Partially healed abrasion 1x 1 cm noted over back left forearm, 2 x 1 cm, 1 x 1 cm noted over medial aspect of left elbow and 1 x 1 cm noted over back of right elbow.
- On dissection of Scalp, Skull and Dura:
Sub scalpal hematoma in variegated colour weighing about 75 grams noted over right temporal and both parietal region. Sub scalpal contusion in variegated colour noted over entire right side of scalp and 3 x 2 cm noted over left frontal region. Both temprolies muscle found contused in variegated colour. Oval shaped depressed fracture 6 x 5 x 0.5 cm noted over right fronto parietal bone. Crack fracture 6 cm in length extending from depressed fracture to right fronto temporal bone. Depressed fracture 6 x7 cm noted over right temporo occipital bone. Crack fracture 6 cm in length extending from depressed fracture to right parietal bone. "Y" shaped crack fracute 14 cm in length extended from the depressed to right parietal bone. Extra dural clot weighing about 20 grams noted over right fronto temporo parietal lobe. Diffuse sub dural and sub arachnoid hemorrhage noted over entire brain except left temporo occipital lobe. Skull base fracture noted over both posterior and right middle cranial fossa."

He issued Post-Mortem Certificate Ex.P.10 and also opined that the deceased would appear to have died of head injury and its complication.

2.(e) P.W.16 Inspector of Police in continuation to his investigation, examined witnesses and recorded their statements, sent the material objects to the forensic laboratory, after the

examination received the forensic report Ex.P.11 from the Forensic Lab and on completion of investigation P.W.16 altered the crime from 448 and 302 I.P.C. to 449 and 302 I.P.C. and filed final report before the court along with alteration report Ex.P.16.

3. The accused was put on trial. In order to establish the case, the prosecution examined P.Ws.1 to 16; marked Exs.P.1 to P.17 and M.O.1. After the examination of prosecution witnesses the accused was questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances for which they denied the complicity. One witness was examined on the side of accused. They have not exhibited any documents on their side. The Trial Court, after analyzing the evidence on record, convicted and handed down the sentences on the appellants/accused as stated above. Aggrieved over the same, the appellants/accused have preferred the present appeal.

4. Learned counsel appearing for the appellants vehemently contended that though the occurrence said to have taken place on 16.01.2015, F.I.R. has been filed only on 19.01.2015 with an inordinate delay. There is no explanation for such huge delay. Further, the evidence of eye witnesses also create serious doubt about the occurrence. P.W.3 is only a child witness; her evidence cannot be given much importance, whereas the evidence of other eye witnesses clearly indicate that injuries caused due to the fall of bureau on the deceased. Therefore, he submitted that the prosecution case is highly doubtful in this case. Hence, he prayed for allowing the appeal.

5. Learned Additional Public Prosecutor submitted that the eye witnesses to the occurrence have clearly spoken about the specific and cruel act of both the accused on the deceased with wooden log. Similarly, P.W.5 and P.W.6 have also seen the accused fighting with the deceased. P.W.2 immediately rushed to the spot and taken the deceased to various hospitals. All of them were relatives to P.W.1, wife of the deceased. They were all along with the deceased in the hospital. Therefore, she could lodge the complaint only on 19.01.2015. Therefore, the delay cannot be considered as fatal to the prosecution, when the witnesses' evidence appears to be natural, it does not suffer from any infirmity. Hence, he prayed for the dismissal of the appeal.

6. In the light of the above submissions, now the point for consideration in this appeal is, "whether the prosecution has established the charges framed against the accused beyond all reasonable doubts?"

7. The accused are brothers and they are cousins of P.W.1. P.W.2 is the mother of P.W.1. P.W.3 is the sister of P.W.1. P.W.5 and P.W.6 also relatives. They are all residents of same village. This fact is not in dispute. The evidence of P.Ws.1 and 2, who are daughter and mother; P.W.4 relative of P.W.1; P.Ws.5 and 6 husband and wife also relatives of P.Ws.1 and 2, when carefully scanned, clearly show that on 16.01.2015 all the family members on the eve of pongal festival, went to the temple situate in the village. The deceased also came with them to the temple. However, P.W.3 did not come to the temple on the ground that new dresses were not purchased for her. The deceased on coming to know that P.W.3 did not come to the temple, since new dresses were not purchased, went to P.W.3's house to pacify P.W.3 and to take her back to the temple. However, P.W.3 did not agree to go with the deceased and she went to P.W.6 house. However, the deceased followed her and dragged her from P.W.6 house. The accused being the cousin brothers of P.W.3 and also relatives of P.W.1, questioned the deceased for compelling P.W.3. During such intervention, there were wordy quarrel between the accused and deceased. As the result, the deceased took P.W.3 to her house. At that time accused came to the house of P.W.3 and caused head injury to the accused with wooden log. Thereafter, immediately they fled away from the place of occurrence.

8. P.W.3 is the main eye witness in this case. Though she is a minor at the relevant point of time, the deceased came and compelled her to accompany him to go to the temple. However, she did not agree for that and immediately she went to the her aunt's (P.W.6) house. The deceased followed her and took her back from P.W.6 house. When P.W.3 was sitting in front of her house, both the accused came and questioned why he is behaving like that and 1st accused beat the deceased with wooden log on the head and thereafter 2nd accused also beat the deceased with the same wooden log on the head. P.Ws.5 and 6 also intervened. Thereafter, the accused fled away from the scene of occurrence. Though P.W.5 and P.W.6 turned hostile, their evidence clearly show that when P.W.3 came to her house and deceased followed her and took her back. At that time both the accused came there and there were quarrel between the deceased and accused. From the evidence of P.Ws.5, 6 and P.W.3, it is clear that in fact P.W.3 did not go to the temple with the family members in order to take her to the temple, the deceased compelled her. However, A1 and A2 being the brothers of P.W.3 and relatives of P.W.1 and deceased, questioned the deceased and beaten him in the quarrel. Immediately, P.Ws.1,2 and other family members rushed to the spot on hearing the occurrence and took the deceased to the hospital. The evidence of P.W.1 that they went to a private hospital at Kumarapalayam, from there the doctor referred to Erode hospital and from there the deceased was referred to

Coimbatore Medical College Hospital. All the family members were all along with the deceased in the hospital. Thereafter P.W.1 lodged complaint to the police. Though, there was a delay in lodging the complaint, we are of the view that from the very nature of the incident, the wife (P.W.1) all along accompanied the injured in various hospitals and after admitting him in the hospital at Coimbatore, she gave complaint. Such a delay cannot be attached with doubt. When the version of the eye witnesses and other witnesses clearly prove the nature of the incident, mere delay in lodging F.I.R. by the wife of the deceased at the relevant point of time cannot be vital to the prosecution. Therefore, mere delay in lodging F.I.R., in our view, in this case, would not be vital to the prosecution.

9. In the above back ground now it has to be seen whether the act of accused would fall under Section 300 I.P.C. Admittedly, the accused have no premeditation and no motive whatsoever. In fact, they intervened when the deceased forcibly tried to take P.W.3 to temple and there were some quarrel between the accused and deceased. Subsequent to the above quarrel, both the accused beat the deceased on the head and left the place. It is to be noted that in fact P.W.3 took the shelter in P.W.6 house, from where, the deceased took her. Even then, P.W.3 did not accompany him. She was sitting in the house. At that time also, deceased was forcing P.W.3 to come to the temple. Then only there were some quarrel between them and the accused attacked the deceased. This circumstance clearly shows that there was no premeditation on the part of the accused. The accused beat the deceased in a sudden quarrel. In fact, the evidence of P.Ws.5 and 6 also show that the deceased in fact beat P.W.3 in an intoxicated state which was objected by the accused who have no intention to cause death of the deceased at the relevant point of time. Both the accused intervened the deceased and beat him with wooden log and immediately left the place. Thereafter, the deceased was taken to hospital and subsequently died only on 21.01.2015. The nature of treatment given to the deceased was not placed on record by the prosecution. From the evidence of P.W.3, P.W.5 and P.W.6, the prosecution has clearly established the fact that only the accused have beaten the deceased, as a result, he sustained head injury, thereafter succumbed to injury on 21.01.2015. However, a perusal of the entire materials available on record does not show any circumstance even to infer that the accused had premeditation or intention to cause death. The entire occurrence took place in a sudden quarrel, particularly, when the deceased slapped P.W.3 minor and compelled her to accompany to the temple, that too, he was in an intoxicated state. During that period, A1 and A2 came to the rescue of P.W.3 which culminated into quarrel, as a result, the accused sustained injury on the head of the deceased and immediately they left the

place. They have not taken any undue advantage.

10. The Post Mortem certificate clearly shows that there were nail marks on the neck of the deceased. This fact clearly suggested that there was quarrel and physical assault subsequent to the quarrel. Hence we are of the view that the act of the accused causing injury, without any intention or premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without having taken undue advantage would fall under the Exception (iv) of 300 I.P.C, at the most the accused had the knowledge that the injury was likely to cause death. Accordingly, the act of the accused fall only under Section 304 [Part II] I.P.C. and not under Section 302 I.P.C.

11. Though it is the contention of the learned counsel for the appellants that the deceased sustained injury due to fall of the bureau, such contention cannot be countenanced on seeing the Post Mortem certificate and Medical Officer evidence. Ex.P.10 Post Mortem Certificate clearly proves that there were physical assaults. Nail scratch mark on the neck and also abrasion in the back side of left forearm of the deceased clearly ruled out the possibility of injuries due to fall of bureau. Hence, such contention cannot be countenanced.

12. Taking into consideration the overall evidence and the manner of occurrence that took place for the trivial issue and the deceased also in an intoxicated state at the time of occurrence as per the evidence of P.Ws.5 and 6, it is clear that there is no intention on the part of the accused to cause death. We are of the view that considering the facts and circumstances of this particular case, it would be appropriate to impose sentence of five (5) years of rigorous imprisonment to the accused to meet the ends of justice. Accordingly, the appellants are convicted under Section 304[Part II] I.P.C. and sentenced to undergo rigorous imprisonment of five (5) years each.

13. As far as the charge under Section 449 I.P.C., we are of the view that the ingredients of the offence u/s 449 I.P.C. is not made out in this case as the appellants were not entered into house in order to commit the offence of death. They have entered the house only to save P.W.3. They have no intention to cause death. They carried with them no weapon. Only in a sudden quarrel they caused injury by wooden log. Therefore, we are of the view that the offence u/s 449 is not at all made out. Accordingly, the conviction rendered by the trial Court u/s 449 I.P.C. is hereby set aside. The fine amount paid by the accused for this offence is ordered to be refunded to them. The point is answered as indicated above.

14. In fine, the conviction and sentence imposed on the appellants/accused for the offence u/s.302 I.P.C. in S.C.No.22 of 2016 by the learned Additional District Sessions Judge, Namakkal, dated 11.08.2017 are hereby modified to Section 304 [Part II] I.P.C., and the appellants/accused are convicted for the offence u/s.304 [Part II] I.P.C. and sentenced to undergo five years rigorous imprisonment each and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for another six months each. Fine amounts already paid for the offence under Section 302 I.P.C. by the appellants/accused are ordered to be adjusted towards the fine amount payable now. The incarceration already undergone by the accused are ordered to be set off under Section 428 Cr.P.C. The appellants/accused are found not guilty under Section 449 I.P.C. and they are acquitted from that charge. The fine amount paid by them for the offence under Section 449 I.P.C. is ordered to be refunded to them. The disposal of the material objects are as per the direction of the Trial Court judgment.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ggs

To

1. THE JUDICIAL MAGISTRATE, THIRUCHENGODE.
2. THE CHIEF JUDICIAL MAGISTRATE, NAMAKKAL.
3. THE ADDITIONAL DISTRICT SESSIONS JUDGE,
ADDITIONAL DISTRICT SESSIONS COURT, NAMAKKAL.
4. THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, NAMAKKAL.
5. THE SUPERINTENDENT, CENTRAL PRISON, COIMBATORE, (IN DUPLICATE
FOR COMMUNICATION).
6. THE INSPECTOR OF POLICE
KUMARAPALAYAM POLICE STATION,
NAMAKKAL DISTRICT.
7. THE DISTRICT COLLECTOR, NAMAKKAL.

8. THE DIRECTOR GENERAL OF POLICE, CHENNAI 4

9. THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

+1cc to Mr.PITTY PARTHASARATHY, Advocate, S.R.No. 18046

Judgment in:
Crl. A.No.588 of 2017

NRI (CO)
TR(03/04/2018)



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