

BAIL SLIP

The Appellant/Accused namely Yesupillai aged male 40 S/o Kaliyamoorthy was enlarged on bail in MP.No.1 of 2011 in CrI.A.No.134/2011 dated 04.03.2011 by this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CrI.A.No.134 of 2011

Yesupillai .. Appellant/Accused

Vs.

The State Rep.by its
The Inspector of Police,
Mayiladuthurai Police Station,
Nagapattinam District.
(Crime No.264 of 2009)

.. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence imposed upon the appellant by Sessions Judge, Nagapattinam, dated 14.12.2010 in S.C.No.85 of 2009.

For Appellant : Ms.Greetha Senthil Kumar

For Respondent : Mr.G.Raman
Government Advocate (CrI.side)

J U D G M E N T

This appeal is directed against the judgment in S.C.No.85/2009 dated 14.12.2010 on the file of Sessions Judge, Nagapattinam. The learned District and Sessions Judge at the end of the trial came to the conclusion that the present appellant is guilty of the offence under Section 304(Part I) IPC and sentenced him to undergo R.I. for 10 years and to pay a fine of Rs.1,000/- in default to undergo S.I. for 1 year for the offence under Section 304(Part I) IPC.

2. The case of the prosecution is as follows:-

(i) The appellant is the father of the accused A2-Kabilan who is facing trial before the Juvenile Justice Board, Thanjavur. Six months prior to the date of occurrence, the deceased Prithvirajan married the daughter of the appellant. The said marriage took place against the wishes of the appellant and his family, due to which enmity arose between the appellant and the deceased. After marriage, the deceased and his wife Sharmila were living in front of the house of appellant in the same street. That being so, 3 days prior to the date of occurrence on 08.03.2009, due to the removal of thali, the daughter of the appellant became angry with the deceased and came to the father's house. On 12.03.2009, at about 19.00 hours, the deceased went to the appellant house and requested the appellant to send his wife. The request made by the deceased was refused by the appellant and his son. So, the deceased abused then in a filthy language. At that time A1 armed with a spade handle and his son A2 armed with an iron pipe, assaulted the deceased and they repeatedly attacked the deceased and caused multiple fatal injuries.

(ii) After the said occurrence, P.W.1 who is an eye witness for the occurrence lodged the complaint before the police under Ex.P1. P.W.1 Senthilkumar and P.W.2 Pugaiyenthi are residing in the same street wherein the deceased and the appellant are residing. On the date of occurrence, they went to the house of Sidharthan. The said Sidharthan is none other than the brother of the deceased and both of them are residing nearby. During the time of occurrence, when the accused attacked the deceased with the spade handle on his head, after seeing the same, P.Ws.1 and 2 rushed to the spot. On seeing them, the accused and his son ran away from the scene of occurrence. Immediately, P.W.2 and other relatives took the deceased to the hospital, and thereafter, came to the place of occurrence.

(iii) After receiving the complaint from P.W.1., P.W.8 Venkatesan, Inspector of Police, registered a case in Crime No.264/2009 under Section 302 IPC. The said FIR was exhibited as Ex.P12 in the trial Court. After registration of the case, he went to the scene of occurrence and prepared Observation Mahazar and Rough Sketch in the presence of witnesses of Saravanan and Sathyaraj. Further, he reordereed the material objects which are marked as M.Os.1 to 5 in this case under the seizure mahazar Ex.P15. Further he recorded statements of witnesses under Section 161(3) Cr.P.C. After completing the above formalities, he prepared the inquest report under Ex.P.16. Thereafter, he sent the dead body for autopsy. P.W.3 Medical Officer, attached

to the Government Hospital, Mayiladuthurai, on 13.03.2009 in the morning hours received requisition sent by P.W.8 and conducted the autopsy over the body of the deceased. During the time of post-mortem, over the dead body of the deceased, he found the following injuries:-

"External Injury:- (1) a laceration injury measuring 3 x 2 x 1 c.m. On the right parietal region; (2) a laceration injury measuring 2 x 2 x 1 c.m and 2 c/, above the right eye brow; (3) a laceration injury measuring 2 x 1 x ½ c.m above the right eye brow (4) a scratch injury measuring 6cm on the back side of the left elbow; (5) an abrasion measuring 4 x 3 c.m in the middle of the upper stomach; (6) an abrasion measuring 2 x 3 c.m on the right side of lower stomach; (7) a laceration measuring 3 x 1 c.m just above the ankle in the right leg; (8) a scratch injury measuring 2 c.m just above the ankle in the left leg.

Internal appearance:- In skull bone the left temporal region was broken measuring 6 x 2 c.m; dura was lacerated. The right parietal region was broken measuring 4 x 2 c.m. Neck - no ligation mark. Hyoid bone and Thyroid cartilage were intact. No fracture on the ribs. The Lungs was pale Heart - chamber empty. Liver, spleen c/s pale."

(iv) After completing the post-mortem, he issued a post-mortem certificate and gave opinion that death had happened due to shock and haemorrhage. After receiving post-mortem certificate from the doctor, the recovered blood stained material objects were sent for chemical examination and after receiving the report, he laid a charge sheet for the offence punishable under Section 302 IPC. In the trial Court, 8 witnesses were examined on the side of prosecution as P.Ws.1-8, besides naming 16 exhibits as ExP.1 to P.16 and 5 M.Os on the side of the accused, none was examined.

3. Today, when the matter is taken up for hearing Ms.Greetha Senthil Kumar learned counsel appearing for the appellant made a submission before this Court that as per the evidence of P.Ws.1 and 2, the alleged occurrence had happened inside the house which belongs to P.W.1. On the other hand P.W.1 and P.W.2 stated in their evidence that they were going to see Sithardhan, and so probably they may not be eye witnesses to the occurrence.

4. In this context, the learned counsel appearing for the respondent/police made a submission before this Court that the evidence given by P.W.1 and 2 are having only minor contradictions which would not spoil the root of the prosecution case. Further, he submitted the house belonging to the

Sidharthan, accused and other witnesses are situated in the same street. Further, as per the case of the prosecution the alleged occurrence had happened in the said street and thereby, he prayed to dismiss the appeal.

5. On considering the arguments advanced by the learned counsel appearing on either side, it is necessary to see the rough sketch recorded by the investigation officer which is marked as Ex.P14. As per the particulars available in the rough sketch as stated by the learned Government Advocate, the houses of the witnesses, the accused and the deceased are all situated in the same street. Further the house belonging to the deceased is near to the house of the appellant. Further on going through the entire evidence of P.W.1 and P.W.2, it is seen that the deceased and the appellant were not residing in bungalows and being residents of the same street, it is probable for them to come to the house of the appellant hearing a noise.

6. In this case, as per the evidence of P.W.1 and P.W.2 they came to the scene of occurrence only after hearing the noise made by the deceased. In other words, on the side of defence, nothing has been elicited that P.W.1 and 2 are interested witnesses and they are reporting in favour of the prosecution case. Even though the only eye witnesses P.W.1 and P.W.2 are relatives of the deceased on going through the entire evidence given by them, it is not possible to come to the conclusion, that they have given false evidence in the trial.

7. Moreover, as per the evidence given by P.W.1 and P.W.2, the deceased had sustained two injuries and further considering the said evidence with the injuries on the dead body, P.W.3 doctor also stated in the evidence that the deceased had suffered laceration injury on the right forehead and near to the right eye brows. The external injuries found on the dead body are clearly corroborated by the evidence given by P.W.1. Accordingly, the evidence of P.W.1 is supported medical evidence.

8. With regard to the recovery of material objects before the trial Court, on the side of the appellant, nothing was suggested that the evidence given by the investigating officer with regard to the recovery of blood stained articles, even though the recovered material object in this case sent for the chemical examination, did not establish the fact that the recovered spade handle and iron pipe were having blood stain, of the appellant and his son. Even assuming that the above aspect is in the favour of the appellant, to sustain the case of the prosecution, the evidence given by P.W.1 and 2 and Ex.P2 post-mortem certificate are sufficient.

9. In the trial Court, even though the charge sheet had been filed for the offence under Section 302, the trial Court came to the correct conclusion that the alleged offence

had happened due to the sudden provocation and cannot be considered to have been committed with a serious motive to eliminate the deceased. However, the evidence of P.W.1 and 2 clearly shows the deceased was in the habit of quarrelling with the appellant frequently. So the finding, with regard to the offence committed by the appellant that he is guilty of the offence under Section 304(Part 1) IPC is found to be correct, thereby, the appeal pretend by the appellant does not have any merits.

10. In the course of arguments, the learned counsel for the appellant made submission before this Court that some leniency may be shown in favour of the appellant.

11. Hence already discussed, the alleged offence had happened due to the provocation made by the deceased. Further, deceased was none other than the son-in-law of the appellant.

12. While confirming the conviction for the offence under Section 304(Part I) IPC, the sentence awarded is reduced to 5 years rigorous imprisonment together with fine of Rs.5,000/- (Rupees five thousand only). It is reported that appellant is on bail. Bail bonds, if any, executed by the appellant would remain cancelled forthwith and the trial Court is directed to secure the presence of appellant and commit him to the prison to serve the rest of the sentence imposed on him.

13. Accordingly, appeal is partly allowed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

AT

TO

1.The Sessions Judge,
Nagapattinam.

2.The Judicial Magistrate No.I,
Mayiladuthurai.

3.The Inspector of police,
Mayiladuthurai Police Station,
Mayiladuthurai,
Nagapattinam District.

4.The Superintendent,
Central Prison,
Trichy,

5.The Public Prosecutor,
High Court, Madras.

Copy To
The Section Officer,
Criminal Record Section,
HighCourt,
Madras.

SVN(CO)
BM 17/07/2018.

Cr1.A.No.134 of 2011



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