

Bail Slip

The Petitioner/Accused Viz, Govindaraj S/O, Natesan (Third Accused in S.C.No.96/2009 PRC No.20/2008 on the file of the Judicial Magistrate No.II Nagapattinam) was released on bail as per order of this Court, dt.29.04/2011 and made in Crl.MP.No.1 of 2011 in CRL.A.No.284 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.07.2018

PRONOUNCED ON : 21.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.A.No.284 of 2011

Govindaraj
S/o. Natesan

... Appellant/Accused 3

Vs

The State by
The Inspector of Police,
Thirukuvalai Police Station,
Nagapattinam District,
Crime No.117 of 2008.

... Respondent/ Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the entire records in Sessions Case No.96 of 2009 on the file of the learned District and Sessions Judge, Nagapattinam and set aside the judgment of conviction and sentence pronounced against the appellant by the learned District and Sessions Judge, Nagapattinam in S.C.No.96 of 2009 on 03.03.2011 and acquit the appellant.

For Appellant : Mr.D.Vairamoorthy

For Respondent : Mrs.M.Prabhavathi Ganeshram
Additional Public Prosecutor.

JUDGMENT

This appeal is directed as against the judgment dated 03.03.2011 made in S.C.No.96 of 2009 on the file of the learned District and Sessions Judge, Nagapattinam thereby convicted the appellant/A3 and sentenced him to undergo one month rigorous imprisonment and to pay a fine of Rs.200/- in default to undergo simple imprisonment for 15 days for the offence under Section 323 of IPC and to undergo three years rigorous and to pay a fine of Rs.1,000/- in default to undergo six months simple imprisonment for the offence under Section 304(ii) of IPC.

2. The case of the prosecution is that P.W.1 is the wife of the appellant/third accused. On 10.09.2008 at about 5.00 p.m., P.W.1 visited the deceased house and complained him about the appellant's illegal intimacy with the second accused. When the second accused was proceeded there, questioned P.W.1 as to why she was making such a complaint against her. Therefore, there was a quarrel between them and the second accused left the place. Thereafter, at about 7.00 p.m., the first accused, who is the son of the second accused came to the house of P.W.1. At that time the third accused i.e., the husband of P.W.1 also present. After assembling there, the first and second accused caught hold P.W.1 and the appellant/third accused assaulted P.W.1. When the deceased intervened and questioned the accused about the attack on P.W.1, the second accused slapped him and the first accused punched him on his back and the third accused attacked on his chest and pushed him down. Due to which, the deceased fell down on the iron gate and became unconscious. P.W.2 while he was crossing through P.W.1's house, he noted the quarrel between the accused and P.W.1. Thereafter, P.W.2 and others came there and found that the deceased died. P.W.1 wife of the appellant lodged a complaint Ex.P.1.

3. On receipt of the complaint P.W.8, registered a case in Crime No.117 of 2008 for the offences under Section 302 of IPC against the accused. The First Information Report marked as Ex.P.6 P.W.9, the Investigation Officer took up the investigation and reached the place of occurrence and prepared Observation Mahazar under Ex.P.5. and also Rough Sketch under Ex.P.7. He conducted the inquest over the dead body of the deceased and prepared inquest report Ex.P.8. Thereafter, he sent the dead body through P.W.7 the Head Constable to the hospital for postmortem.

4. P.W.3, the Doctor conducted the postmortem over the dead body of the deceased and found the following injuries:-

"EXTERNAL INJURIES

A lacerated wound on the left front parietal area of skull. 5X1Xbone deep.

INTERNAL EXAMINATION

Skull opened - Fracture of left parietal bone was present. There was a big sub dural Hematoma to the size of 5X5 cm underlying the fracture. Hyoid bone - intact Thorax opened - Heart showed - Ratty Changes Abdomen - Uniform Stomach empty, small intestine empty. Bladder - empty"

The Doctor P.W.3 sent viscera for chemical examination and found that no poison was deducted. He opined that the deceased was died due to the injuries on his head. The postmortem certificate is marked as Ex.P.3. and viscera report is marked as Ex.P.4. After examination of witnesses, P.W.9, the Investigation Officer laid charge sheet against the accused for the offences under Sections 342, 302 r/w 34 of IPC. The trial Court framed charges and the accused pleaded not guilty.

5. During the course of the trial, the prosecution examined P.W.1 to P.W.9 and marked Ex.P.1 to Ex.P.8. When the accused was questioned under Section 313 of Cr.P.C. about the incriminating evidence against them, they denied the same, however they did not lead any evidence. On considering the above oral and documentary evidence, the trial Court acquitted all the accused for the offence under Section 302 r/w 34 of IPC, however convicted the first and second accused for the offence under Section 342 of IPC and convicted the appellant/third accused for the offences under Sections 323 and 304(ii) of IPC and sentenced him as stated above. As against the said conviction, the present appeal.

6. The learned counsel appearing for the appellant contended that there was no motive to commit the alleged offence to the appellant and the deceased is none other than the elder brother of the appellant. He further submitted that there is a huge delay in lodging the complaint and the prosecution has not explained the delay and it creates serious doubt in genuineness and origin of Ex.P.1 complaint. Further he would contend that there is no independent witness to corroborate the evidence of P.W.1. Except the evidence of P.W.1, no witnesses supported the case of the prosecution and others turned hostile. When the trial Court concluded that as per the overtact against the first and second accused, they fall only under Section 342 of IPC, but as far as the appellant/third accused's overtact, he falls under Sections 323 and 304(ii) of IPC. He further contended that when all the accused had no common intention to cause death of the deceased, the appellant also should have been given the same benefit. Further he pleaded that the appellant now aged about 65 years and he has suffered with paralysis attack and bedridden as such he prayed for reduction of the sentence.

7. Per contra, the learned Additional Public Prosecutor appearing for the State submitted that the prosecution proved the case beyond all doubts and prayed for confirming the conviction and sentence passed against the accused. Further she would contend that there is no delay in lodgement of the First Information Report and the occurrence took place on 10.09.2008 at about 7.00 p.m., and the complaint lodged at 11.30 p.m., on the same day, as such there is absolutely no delay in registering the First Information Report. Further she would contend that the sole witness P.W.1 is a genuine and trustworthy witness and the sole witness can sustain the conviction of the appellant as such he prayed for dismissal of the appeal.

8. Heard the argument advanced by Mr.D.Vairamoorthy, learned counsel appearing for the appellant and Mrs.M.Prabavathi Ganeshram, learned Additional Public Prosecutor appearing for the State and also perused the materials placed before this Court.

9. In the light of the above submission, now it has to be analysed as follows :-

i) Whether the death of the deceased was due to homicidal violation?

ii) Whether the prosecution has proved the guilt of the appellant beyond all reasonable doubts?

10. On the careful scrutiny of the evidence of P.W.3, the Doctor who conducted the post mortem on the deceased deposed that a laceration wound measuring 5X1c.m.Xbone deep found on the front parietal area. On internal examination, the medical officer noted down the fracture on left parietal and sub dural hematoma. This injury caused death of the deceased and it is proved by Ex.P.3, the postmortem certificate. Therefore, the prosecution has proved the death of the deceased on the attack of the appellant/A3.

11. P.W.1, the wife of the appellant deposed that when she questioned about the illegal intimacy of the appellant, first and second accused caught hold her. When the deceased intervened, the second accused slapped the deceased on his chest and first accused attacked on his backside and the appellant/third accused assaulted on his chest and pushed down, as such the deceased fell down on the iron grill gate and sustained head injury, due to which he died. The evidence of P.W.1 corroborated by the evidence of P.W.2, who is the neighbour of the deceased. Therefore, the intention of the accused 1-3 was only to beat P.W.1 and they had no intention to cause any injury on the deceased. Therefore, the trial Court rightly acquitted the accused for the offence under Section 302 of IPC and convicted them for the offence under Section 304(ii)

of IPC.

12. The appellant/A3 pushed the deceased towards iron grill gate, as a result the deceased fell down and sustained grievous injury on his head and died. The appellant had no intention to commit murder of his own brother/deceased. Only when he intervened to prevent the attack on P.W.1, the appellant/A3 attacked him on his chest and pushed down him. His act of pushing the deceased forcibly over anger amounts to culpable homicide and not amount to murder. Therefore, the trial Court rightly convicted the appellant/A3 for the offence under Section 304(ii) of IPC

13. With regard to the sentence imposed on the appellant, the occurrence had taken place due to the intervention of the deceased and as such the appellant absolutely had no intention to attack the deceased. Further, there was no plan to commit any crime on the deceased. The appellant also now aged about 65 years and suffered with paralysis attack and got bedridden. In such circumstances, this Court is of the opinion that the appellant is entitled to be given the benefit of Section 4 of the Probation of Offenders Act.

14. It is relevant to relay the judgment of the Hon'ble Supreme Court of India reported in "1999(SC) Cr.1046 - State of Karnataka Vs. Muddappa", held as follows :-

"2. The learned Counsel for the appellant is not in a position to assail the acquittal of the accused under Section 302 I.P.C., but he vehemently contends that the Court did not bear in mind germane considerations for releasing the accused on probation after convicting him under Section 304 Part II I.P.C. Whether the benefit of the Probation of Offenders Act could be extended in any particular case depends upon the circumstances of that case. Admittedly, there is no statutory bar for application of the Act to an offence under Section 304 Part II where the maximum punishment is neither death nor imprisonment for life. In that view of the matter and on examining the impugned judgment of the High Court, we find that the Court did consider the relevant material and then came to the conclusion that the accused should be released on probation by applying the provisions of Section 4 of the Probation of Offenders Act. We see no infirmity with that order to be interfered with by this

Court after this length of time, more so when nothing has been pointed out as to whether the accused has, in any way, violated the terms and conditions of allowing him on probation."

In another case the Hon'ble Supreme Court of India held in the judgment reported in "1976 Cr.LJ 1987(1) Musakhan & others Vs. State of Maharashtra", as follows :-

".....The Probation of Offenders Act is a social legislation which is meant to reform juvenile offender so as to prevent them from become hardened criminals by providing an educative and reformative treatment to them by the Government. Unfortunately, though the provisions of Section 6 of the Probation of Offenders Act are mandatory, the Courts do not appear to make wise use of these provisions which is necessary to protect our young generation from becoming professional criminal and therefore a menace to the society....."

15. This Court felt that to avail the benefit under the Probation of Offenders Act, this Court asked to pay some compensation to the deceased family. The learned counsel appearing for the appellant voluntarily submitted that the appellant would pay a reasonable amount. Considering these circumstances, no useful purpose will be served if the appellant is in custody, particularly without his involvement in any other cases after suspending of sentence as surfaced.

16. In fine, the criminal appeal is partly allowed with the following directions:-

(a) The conviction of the appellant for the offences under Sections 323 and 304(ii) IPC is confirmed.

(b) The appellant is entitled to be given the benefit of Section 4 of the Probation Offenders Act and the sentence imposed on the appellant for the offence under Sections 323 and 304(ii) IPC is set aside and appellant is released on probation of good conduct for the period of three years and in the mean time, he shall maintain peace and good behaviour and shall bear and receive sentence when he called upon during the said period.

(c) The appellant shall execute a bond for a sum of Rs.25,000/- (Rupees twenty five thousand) with two sureties each for a like sum to the satisfaction of the trial Court.

(d) The appellant is directed to pay a sum of Rs.25,000/- as compensation to the deceased wife, P.W.6 within a period of eight weeks from today, failing which, the sentence imposed by the trial Court shall be restored.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer
The District and Sessions Judge,
Nagapattinam.
2. The Inspector of Police,
Thirukuvalai Police Station,
Nagapattinam District,
3. The Public Prosecutor,
High Court,
Madras.
- 4.The Judicial Magistrate,
No.II, Nagapattinam.
- 5.-do-throu-the Chief Judicial,
Magistrate, Nagapattinam

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

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CRL.A.No.284 OF 2011

PA(CO)
GSP(18/09/2018)