

BAIL SLIP

The Appellant / Accused was released on Bail and in by the order dated 21/02/2011 made in CrI Mp.No.1 of 2010 in CrI A.498 of 2010 on the file of this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 11.07.2018

JUDGMENT PRONOUNCED ON : 05.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No.498 of 2010

Kavattamani @ Ramachandran (Age 30/2009)

S/o Subramani Appellant / Single Accused

Vs

State by the Inspector of Police

Cherambadi Police Station

The Nilgiris

(Crime No. 24/2009)

Respondent / Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Criminal Procedure code, to set aside the Judgment and conviction dated 26.04.2010 by the learned Sessions Judge, of the Nilgiris at Udahamandalam in SC No.32 of 2009 and acquit the appellant.

For Appellant : Mr.S. Suresh

For Respondent : Ms. T.P. Savitha

Government Advocate (Criminal Side)

J U D G M E N T

The appellant is the sole accused in SC No. 32 of 2009 on the file of the learned Sessions Judge, Udahamandalam. He stood charged for the offence under Section 302 IPC and under Sections 3 (1) (X) and 3 (2) (V) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989. By a Judgment dated 26.04.2010, the trial Court convicted him under Section 304 (ii) IPC and sentenced him to undergo rigorous

imprisonment for 7 years and to pay a fine of Rs.10,000/- in default to undergo 1 year rigorous imprisonment. Challenging the said conviction and sentence, the appellant is before this Court with this Appeal.

2) The Case of the prosecution in brief is as follows:-

The accused Kavattamani @ Ramachandran belongs to Hindu Agamudayar Community, which is recognized as backward class and the deceased Boopalan belongs to Hindu Parayar community, which is recognized as Scheduled Caste community. The deceased Boopalan was the then Drivers' Union Secretary of Kolapally. PW 2 Yogeswaramurthy is the resident of the same village. Prior to the occurrence, the Drivers' Union celebrated the Muneeshwaran Temple festival. At that time, the accused is the accountant in the Union. On 17.03.2009 in the Union office, Kollapally at about 6.00pm, the deceased Boopalan, in the presence of Natarajan @ Ramesh (PW3) and one Kantharuban, questioned the accused with regard to the accounts pertaining to the festival, enraged by that the accused by saying " நீ என்னடா பறப்பயல் என்னிடம் கணக்கு கேட்பது" inflicted a stab injury on the left side of the chest of Boopalan with the help of M.O.1 Screw Driver. Due to the stab injury, the deceased Boopalan fainted at the place of occurrence. Immediately, the accused ran away from the scene of crime. After seeing the occurrence PW 2 went over to the house of the Boopalan and informed the occurrence to the wife of Boopalan. On receipt of information, PW 1, who is the wife of the deceased went over to the place of occurrence and took the Boopalan in a Car to Bethery Hospital along with PW 2 and PW 3. In the Hospital, PW 6 Dr. Sathish Nayak examined the Boopalan and declared that he is dead. Ex.P.7 is a Death intimation. Thereafter, PW 1 lodged a complaint under Ex.P.1 before Cherambadi Police Station.

3) On receipt of the complaint given by PW 1, a case has been registered in Cr.No.24 of 2009 under section 302 IPC and under Section 3 (2) (V) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989. Ex.P.13 is the printed First Information Report. After despatching the First Information Report along with the Ex.P.1 complaint to the court, the copy of the same was sent to the Deputy Superintendent of Police, Devala Division for investigation. On receipt of the copy of First Information Report, PW 11 Tr. Rajan, on 17.03.2009 at about 12.00 pm took up the case for investigation, for which the Superintendent of Police, Nilgiri District issued an order to PW 11 for conducting investigation. Ex.P.6 is the Order issued by the Superintendent of Police. On 18.03.2009 at about 00.30 hours, PW 11 went over to the place of occurrence and prepared an Observation Mahazar under Ex.P.4, in the presence of PW 5 Durairaj and one Rajendran and also he drawn a

Rough Sketch under Ex.P.5. Further at about 2.30 am, in the presence of the very same witnesses, PW 11 seized M.O.3 blood stained cement pieces under Ex.P.6 Seizure Mahazar. At about 7.00 am, he went over to the Sulthan Bathery and conducted inquest on the body of the deceased Boopalan. Ex.P.17 is the Inquest Report. After the preparation of Inquest Report, the dead body was entrusted to one Sasidharan (PW 7), the head constable, attached with the said police station for handing over the same to the Doctor with the letter of requisition for conducting autopsy. Ex.P.8 is a requisition. After receiving the requisition, PW 8 Dr.Cyriac Job conducted autopsy on the body of the deceased Boopalan and issued Ex.P.10 Post Mortem Certificate. During the time of postmortem, he found the following injuries.

Punctured lacerated wound 0.6 x 0.6 cm left side of chest 3.5cm outer to midline just below collar bone with contused abrasion around 1 x 0.8 cm. It entered the chest cavity through the 1<sup>st</sup> intercostal space 2.5 cm outer to midline (0.5 x 0.5 cm) then pierced wall on the left side of pulmonary trunk 1cm above its root. The wound was directed downward, backwards, and to the right with a total minimum depth of 6.5 cm. There were blood infiltration around and on the hilum of left lung. 200Gm of clotted blood and 200 ml of fluid blood collected in the pericardial cavity. Finally, he gave an opinion as "The deceased died due to penetrating injury sustained to chest causing cardiac tamponade"

After postmortem, PW 7 removed white and pale yellow colour shirt (M.O.5), coffee black colour pant (M.O.6), blue colour underwear (M.O.7) from the body of the deceased. Subsequently the same has been handed over to the Investigating Officer under Ex.P.9 Special Report. Further, the body of the deceased was handed over to the relatives for burial.

4) On the same day at about 11.45 am, in front of Elia Shop, PW 4 Chadrasekar and one Ramesh identified the accused to the Investigating Officer. Subsequently, the accused was arrested by the Investigating Officer. After made of arrest, the accused voluntarily gave the confession statement and the same was recorded by the Investigating Officer in front of PW 4 Chandrasekar and one Ramesh. Pursuance to the recording of confession statement, on the same day at about 3.00pm, in front of the house of the accused, the accused produced M.O.1 Screwdriver and M.O.2 coffee colour shirt. Both the material objects were seized by the Investigating Officer under Ex.P.3 Seizure Mahazar. The admitted portion of the confession is Ex.P.2.

5) In continuance of the investigation, on 19.03.2009,

the investigating Officer recorded the statements given by the witnesses and on 20.03.2009, he addressed to one Kalu ( PW 10), Tahsildar of Devala, for issuing the Community Certificate to the accused and as well as to the deceased. On receipt of Ex.P.14 Requisition letter from PW 10, the Tahsildar issued the Community Certificate, in which, it was mentioned that the deceased Boopalan belongs to Hindu Parayan community. In the same way, he issued a Community Certificate to the accused, in which it was mentioned that the accused belongs to Hindu Agamudayar Community. Ex.P.15 is the Community Certificate of the accused as well as to the deceased.

6) Secondly, the Investigating Officer addressed to the Judicial Magistrate to send the material objects for chemical examination. The Chemical Analysis Report is Ex.P.21. The Serology Report is Ex.P.22. After full fledged investigation, he came to a positive conclusion that the accused committed the offence under section 302 IPC and under Section 3 (1) (X) and 3 (2) (V) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989. Finally, he laid the Final Report against the accused under Section 173(2) of Cr.P.C.

7) Based on the above materials, the trial court framed the charges against the accused and the accused denied the same. In order to prove the case on the side of the prosecution, as many as 11 witnesses were examined as PW 1 to PW 11 and 22 documents were marked as Ex.P.1 to Ex.P.22. Besides 7 material objects.

8) Out of the said witnesses, PW 1 is the wife of the deceased has stated that after receiving the intimation through PW 2, she went over to the occurrence place along with PW 2 and made arrangements for admitting the deceased in the hospital. Further she stated about the lodging of complaint before the Police officer.

9) PW 2 Yogeshwaramoorthy, who is the driver working along with the deceased and with the accused. He has stated in his evidence that before the occurrence, the deceased was functioned as an Accountant in the Union. Further on behalf of the Union, one week before the date of occurrence, they are celebrated Kolappally Muneeshwaran Temple festival. On 17.03.2009 in the Union office at Kolappally at about 6.00 pm, the deceased Boopalan questioned the accused with regard to the accounts pertaining to the festival, enraged by that the accused by saying " eP vd;dlh gwg;gay; vd;dplk; fzf;F nfl;gJ" inflicted a stab injury on the left side of the chest of Boopalan with the help of M.O.1 Screw Driver. Immediately, the deceased Boopalan fell down and went to the stage of unconscious. He has further stated that immediately, he went to the deceased house and informed the same to PW 1 and thereafter

both of them returned to the occurrence place and made arrangements for giving treatment to the deceased. He has further stated that in the Hospital, after examining the deceased, Doctor declared as he is dead.

10) PW 3 Natarajan @ Ramesh is also a driver working with the deceased has stated that on the date of occurrence, the deceased asked the accused about the accounts pertaining to the temple festival. Further, he has stated that at the time of occurrence, the accused took the screw driver and inflicted the injury on the chest of the deceased. Further due to the said injury, the deceased went to the stage of unconscious and thereafter a message was sent to PW 1 and after declaring the death of the deceased, she lodged a complaint before the police.

11) PW 4 Chandrasekaran is also an eyewitness to the occurrence has corroborated the evidence of PW 3. Further he has stated that on 18.03.2009, at about 2.00 am, the investigating Officer requested him to identify the accused and by complying the request made by the police officers, on the same day at about 12 noon near Elias Store, he identified the accused. After the identification, the said Investigation officer secured the accused and recorded the confession statement given by him. In the confession statement, the accused admitted the guilt and after recording the confession statement, he took the witness along with Investigation Officer to his house and hand over the hidden blood stained coffee colour shirt and blood stained screwdriver. Both the material objects were seized by the Investigating Officer through Seizure Mahazar.

12) PW 5 stands as a witness to the confession statement as well as to the Seizure Mahazar. He is the Village Administrative officer by profession has stated in his evidence that on 18.03.2009 at about 1.00 am, the Investigating Officer in this case prepared an Observation Mahazar and Rough Sketch. Further he stated that in his presence, PW 11 seized the blood stained cement pieces and small cement pieces from the place of occurrence.

13) PW 6 is the Doctor has stated that on 17.03.2009, after examining the deceased, he declared that he is dead. PW 7 is the then Head Constable in Cherampadi Police Station has stated that as per the direction given by PW 11, he entrusted the dead body to the Doctor along with requisition letter for conducting autopsy. Further he has stated that after completing the process of postmortem, he received the M.O.5 to M.O.7 and submitted the same before PW 11 along with special report.

14) PW 8 Dr. Cyriac Job has stated about the process of Postmortem and about the injuries sustained by the deceased

Boopalan. Further he has stated that after receiving the chemical examination report, he gave final opinion that the deceased died due to the penetrating injury sustained to chest causing cardiac tamponade. Further, he has stated that the injury found on the chest, may be due to punching of M.O.1 Screwdriver. Moreover, he has stated that the injury found on the chest will not cause instantaneous death, but the injury is sufficient in the ordinary course to the death.

15) PW 9 is the then Sub inspector of police has stated about the receiving of complaint from PW 1 and about the registration of the case. PW 10 is the Tahsildar has stated about the receipt of requisition from the Investigating Officer and about the issuance of Community Certificate to the deceased and to the appellant / accused. PW 11 is the then Deputy Superintendent of Police, Devala has stated about the details of investigation, receiving the Community Certificate from PW 10 and about the filing of final Report before the Magistrate Court.

16) The learned trial Judge, with reference to the incriminating evidence adduced by the prosecution, questioned the accused under section 313 Cr.P.C. and for which, he pleaded not guilty. Further, he did not chose to examine any witnesses. However, he marked 2 documents through PW 10 as Ex.D1 and D2.

17) The learned trial Judge on perusal of the materials placed and considering the arguments advanced on both sides, convicted and sentenced the appellant / accused as stated supra and challenging the same, the present appeal has been filed.

18) I have heard. Mr.S.Suresh , learned Counsel for the appellant, Ms. T.P. Savitha, Government Advocate (Criminal Side) learned Government Advocate for the respondent and perused the records carefully.

19) The learned Counsel for the appellant would contend that there are lot of contradictions in the evidence of PW 1 to PW 3. He would contend that there is delay in sending the statements of witnesses and report to the Court. He would further contend that the above contradictions create a serious doubt on the prosecution case.

20) Per contra, the learned Additional Public Prosecutor, would contend that PW 2 and PW 3 are the association members run by auto drivers. Further, they are the eyewitnesses to the occurrence. According to them, the occurrence took place in the association office in the presence of PW 2 and PW 3. Further, the details of the occurrence clearly narrated in the

trial Court through the evidence of PW 2 and PW 3 and the same was corroborated through the medical evidence. Further, there is no delay in registering the case. Considering all the above facts, the trial court has rightly convicted the appellant under Section 304(ii) IPC, since the occurrence took place out of sudden provocation.

21) Further, he would submit that there is no need to interfere with the conviction and sentence passed by the trial Court.

22) I have carefully considered the rival submissions made by either side.

23) Admittedly, there are two eyewitnesses to the occurrence. Both of them are the association members and they are present at the time of occurrence. In the cross examination, the presence of the above witnesses is not disputed on the side of the accused. Further, the occurrence had happened in the office of Sangam run by auto drivers. Therefore, the presence of PW 2 and PW 3 in the occurrence place is natural and it cannot be said that they are prepared after due deliberations in order to get conviction.

24) In otherwise, as per the evidence of PW 2, immediately after seeing the occurrence, he went over to the house of PW 1 and informed the same, then only PW 1 came to the occurrence place and made arrangements for admitting the deceased in Hospital. Consequently after knowing the death of the deceased, she immediately went to the police station and lodged complaint. Now on go through the contentions of the First Information Report, the occurrence had happened on 18.30 hours on 17.03.2009. Further, it was mentioned on the same day at about 23.30 hours, the case has been registered in Cr.No.24 of 2009. Further, the said First Information Report was received by the Magistrate on the next day morning at about 11.40 hours. So considering the timings mentioned in the First Information Report will categorically prove that there is no delay in lodging the complaint and also there is no delay in despatching the First Information Report to the Magistrate.

25) It is evident from the evidence of PW 2 and PW 3 at the time of occurrence, by using the screwdriver, the accused stabbed the left side of the chest of the deceased Boopalan and caused injury. On go through the entire cross examination of PW 2 and PW 3, I do not find any valid and acceptable reason to disbelieve the testimony of PW 2 and PW 3, the entire cross examination conducted by the defence counsel is no way impeach the creditability of the chief examination given by the PW 2 and PW 3.

26) Now, on through the evidence of Medical Officer, he categorically stated that the injury inflicted on the chest of the deceased is sufficient for causing the death. According to the evidence of medical officer, the only one stab injury is sufficient for causing death. Thereby the evidence given by the Medical Officer is fully corroborated the evidence given by the eyewitnesses. Apart from that Ex.P.21 and Ex.P.22 discloses that the blood found in the occurrence place, blood stained shirt produced by the accused and blood found in the shirt wore by the deceased are all human blood. Eventhough, groupism is not successful, that alone is not sufficient to discard the report given by the Chemical Examiner.

27) Moreover, in the cross examination of PW 2 and PW 3 they categorically mentioned that the occurrence place is the office of the Union, in which, some screwdrivers and materials which are used for repairing the Auto are spread over inside the office. The said evidence is natural and it will connect the accused with the alleged crime and confirms the creditability of the evidence given by PW 2 and PW 3.

28) The main contention raised by the learned Counsel for the appellant is that the accused is not having any motive for intention to kill the deceased. Now considering the verdict of trial Court, the accused had convicted only for the offence under Section 304(ii) of IPC and not for the offence under Section 302 IPC. The trial Court considered the surrounding circumstances before the occurrence and after the occurrence and came to the conclusion that the offence committed by the accused will attract the ingredients of 304 (ii) of IPC alone. So proving the motive alone is not necessary for convicting the accused for the offence under section 304 (ii) of IPC.

29) Lastly, the learned Counsel for the appellant would content that, according to the evidence given by PW 2 and PW 3, prior to the occurrence, both the accused and the deceased quarreled with each other in respect to the accounts maintained by the accused. But PW 2 and PW 3 being the association members, if really they are present in the occurrence place, definitely they have intervened in the quarrel and attempted to pacify them, but the cross examination of PW 2 and PW 3, confirms that they are not intervened in the quarrel happened between the accused with the deceased, which shows that they are not present at the time of occurrence.

30) On considering the said circumstances, it is true that both the PW 2 and PW 3 have admitted in their cross examination that they have not intervened into the quarrel happened between the accused and the deceased. However, they had stated before the occurrence, the deceased asked the accused for

submitting the accounts and enraged over the question, immediately the accused took the screwdriver and stab the injury. The said evidence shows that before the occurrence, both the deceased and accused are not physically quarreled with each other. Thereby there is no scope for PW 2 and PW 3 for intervening into the heated row happened between the deceased and the accused. Accordingly, the last submission made by the learned Counsel for the appellant is not having any valid reason for holding this appeal.

31) Coming to the point of quantum of punishment, the trial Court sentenced the accused to undergo 7 years rigorous imprisonment. Now on considering the circumstances, in which the offence had happened for the simple reason, with regard to the questioning of accounts pertaining to the temple festival. Further, being the auto driver, the accused very well aware that the infliction by a screwdriver on a chest necessarily would cause death. Due to the death of the deceased, PW 1, who is the wife of the deceased lost her matrimonial life. Therefore, considering all the above facts including the gravity of the offence, I am of the opinion that the reduction in punishment is not necessary for disposing this appeal and accordingly this appeal is dismissed.

Sd/-  
Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

vrn

To

1.The Sessions Judge,  
Nilgiris at Udhahamandalam.

2.The Inspector of Police  
Cherambadi Police Station  
The Nilgiris.

3.The Judicial Magistrate,  
Gudalur, Nilgiris District.

4.The Chief Judicial Magistrate,  
Nilgiris at Udhahamadalam(For Information)

5.The Superintendent,  
Central Jail, coimbatore.

6.The District collector,  
Nilgiris.

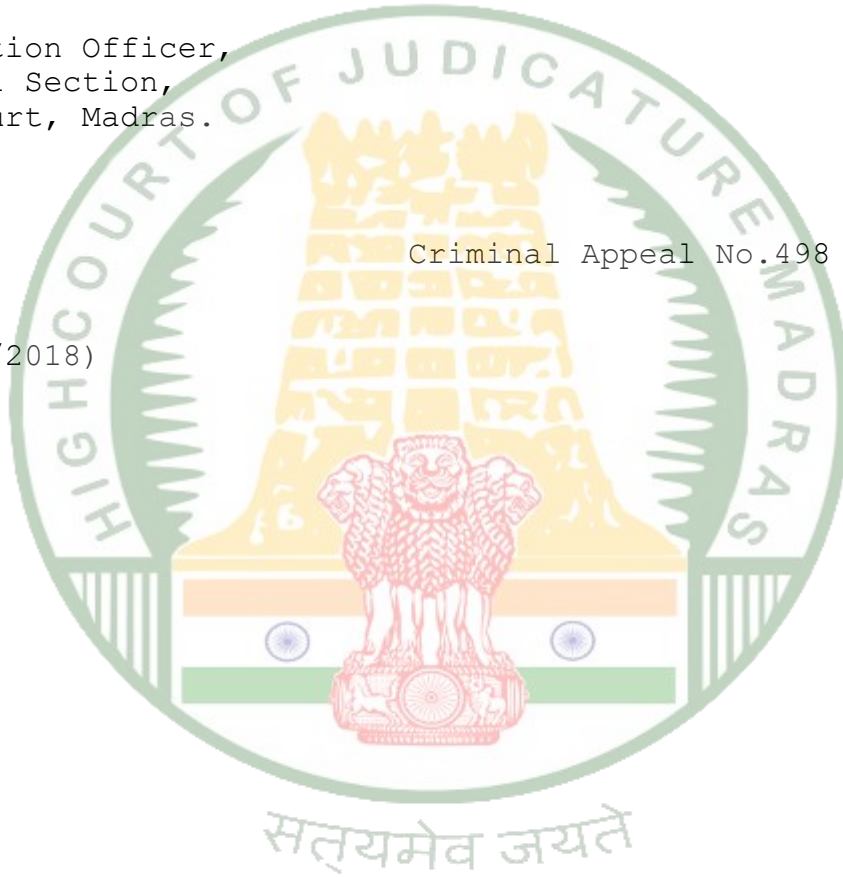
7.The Directed General of Police,  
Mylapore, Chennai.

8.The Public Prosecutor,  
High court, Madras.

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

Criminal Appeal No.498 of 2010

RSV(CO)  
RMP(25/09/2018)



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