

Bail Slip

That the Petitioner/Accused viz Arumugam @ Sankar, Aged 31 years S/o.Sagadevan was directed to be released on bail as per order dated 27/10/2010 made in MP.NO.1/2010 in CRL.A.NO.609/10 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 28.06.2018	Date of Pronouncing Judgment 18.07.2018
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THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.A.No.609 of 2010
and
M.P.No.1 of 2010

Arumugam @ Sankar

... Petitioner/Accused

Vs.

State
The Inspector of Police,
Thirukanur Circle
Pondicherry
(Cr.No.180/2005)

... 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 judgment dated 20.09.2010 in S.C.No.84/2005 on the file of II Additional Sessions Judge, Puducherry.

For Petitioner : Mr.A.Raghunathan, Senior Counsel
for T.I.Ramanathan

For Respondent : Mr.D.Bharathachakravarthy
Public Prosecutor(Pondicherry)

J U D G M E N T

Aggrieved over the judgment rendered by the Second Additional Sessions Judge, Puducherry in S.C.No.84/2005, the appellant being the sole accused in the above case preferred this appeal praying to set aside the conviction and sentence and to acquit him from the charges.

2. In the trial Court, the appellant is convicted for the offence under Section 304(Part 2) IPC and sentenced to undergo rigorous imprisonment for 10 years and also to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for 3 months.

3. From the available records, the case of the prosecution in the trial Court is as follows:-

i) The appellant Arumugam and the deceased Kannan are having the residence one by one near to the place of occurrence. In fact, the father of the deceased and the father of appellant are brothers. Admittedly, both the families are having previous enmity in respect of partition with regard to the ancestral property. On the fateful day (28.09.2004) in the presence of P.Ws.1 to 4 at about 2.00 pm., the deceased plucking the coconuts from the tree for which, P.W.1 brother's wife one Krishnaveni made quarrel with him and questioned as to why he plucked the coconuts from the common tree. In consequence of the wordy altercation, the appellant took palmyra raft and attacked the deceased on the left side of the chest. Due to attack made by the appellant, blood is came from the mouth of deceased. The said incident was witnessed by P.W.1 to 4.

ii) Immediately, after assault made by the appellant, one Sivanesan and Kanagaraj took the deceased to the primary health centre, Ramanathapuram in a motor cycle, from where he was taken to Jipmer Hospital.

iii) In the Jipmer Hospital, the doctor advised to admit the injured in Government General Hospital, Pondicherry, for further treatment. So the injured/deceased was taken to the Government Hospital.

iv) On the day of occurrence itself P.W.7 Dr.Harshavardan Sharma he was working as a doctor in Community Centre, Mannadipet, at about 9.15 pm., examined the appellant and found the following injuries:-

The nature of injury is abrasion 3 x 0.25 cm. on the left cheek for which he sent intimation to police. Ex.P10 is the said intimation. Further, in respect of treatment given to the appellant, he issued wound certificate under Ex.P11.

v) Before that on 30.08.2009 when P.W.12 Dr.A.Calaymany is on duty in Mannadipet Hospital, the very same appellant got treatment for the same injury stated by P.W.7. In this regard, P.W.12 issued a wound certificate under Ex.P17. Further, after the alleged occurrence, subsequent to the reference from the Jipmer, the deceased was admitted in the Government Hospital, Puducherry, in which P.W.10 Kannan was working as a Medical

Officer. On 02.09.2005, since the condition of the deceased is very poor he fixed ventilator. But in spite of giving necessary treatment due to injury sustained in the chest, he died at 8.15 pm. P.W.10., issued a death intimation to police station.

vi) On 29.08.2005 at about 6.30 pm when P.W.14 Senthilkumar the then Sub Inspector of Police is on duty, while he was in charge of Thirukanur Police Station, received a phone message from P.C.1356 attached to Jipmar O.P with regard to injuries sustained by the deceased Kannan under Ex.P18. After receiving the intimation, since the deceased is referred to the Government Hospital, he reached the Government General Hospital and received a certificate from Dr.Kamala in which it was stated that the deceased is in the stage of unconscious. The said certificate issued by the doctor was marked as Ex.P.19. Thereafter, he recorded the statement from P.W.1. Subsequently, he registered a case in Crime No.180/2005 under Section 307 IPC and took up the case for investigation. Ex.P20 is the printed FIR. During the course of investigation, he visited the scene of occurrence at 1.00 am along with Head Constable and prepared a crime details report at about 1.15 am. Further, with the help of police constable 926, P.C.1167, he took the photograph of the scene of occurrence. Moreover, he prepared a observation mahazar in the presence of P.W.4 and one Kanagaraj. Further, from the scene of occurrence, he seized blood stained Lungi, blood stained road pieces under the cover of mahazar. Then he examined the witness and recorded the statements. Further he arrested the accused at about 17.45 hours and recorded the confession statement in the presence of P.W.5 Murugan and one Vasu.

vii) In the confession statement the appellant admitted the guilt. Further, he is willing to identify the Palm raft kept in the cowshed. Based on the said confession, P.W.14 went to the cowshed and recovered Palm raft under the cover of mahazar. Then he examined the said Murugan and Vasu and recorded the statement. Subsequently, the appellant was sent to the Court for remand. In the course of investigation on 02.09.2005 at about 8.50 pm, he received the information that the said Kannan was died in the hospital. So he handed over the records to the Inspector of Police for further investigation.

viii) P.W.15 I.R.C.Mohan, when he was working as Inspector of Police, received the case records and altered the Section of law from 307 IPC to 302 IPC under report Ex.P21. He conducted the enquiry in the presence of the Panchayathars and came to the conclusion that death of the Kannan had happened due to the assault made by the accused. After the preparation of inquest report, he sent the dead body for autopsy. During the time of

post-mortem, the doctor found the following external injuries:-

External Injuries (Ante-mortem)

1. Sutured wound 5 cm. Present over left frontal region of head.
2. 'V' shaped lacerated wound, each side measuring 1x0.5 cm. Present over left frontal region of head.
3. Contusion 24x4 cm. Present obliquely over right shoulder and right side of chest.

ix) After completing the post-mortem, the investigation officer recorded the Doctor's statement. Thereafter, on 19.10.2005, he completed the investigation and laid charge sheet for the offence under Section 302 IPC.

x) In the trial Court, after hearing both sides, charge has been framed against the appellant for the offence under Section 302 IPC. Thereafter, 15 witnesses were examined on the side of prosecution besides 21 documents were marked as P.1 to P.21. Further 3 material objects were marked as Mos.1 to 3. After concluding the trial, the learned second Additional District Judge, Puducherry came to the conclusion that the appellant is found guilty of the offence under Section 304(2) IPC and convicted him as stated above. Against which, this appeal has been preferred by the appellant.

4. Today, when the matter is taken up for hearing, the learned counsel for the appellant submits as during the time of occurrence, the deceased only assaulted the appellant and caused injury. Further, the evidence given by the Doctor P.W.7., and P.W.12 proves that the appellant was assaulted by the deceased through the knife. But as per the case of prosecution, the appellant assaulted the deceased by using palmyra raft. In fact, in this occurrence in order to save his life, the appellant using the palmyra raft and assaulted the deceased. So the assault made by the appellant is nothing but the self defence which is not an offence under Section 100 Cr.P.C. On considering the argument, it is true if really the occurrence had happened as stated by the appellant's counsel, it is necessary for the appellant for using some force to save his life. But in this case, as per the evidence of P.W.4, who is the advocate practising in pondicherry, before the occurrence, the appellant dashed against the pandakal. Thereby, he has sustained abrasion in the left cheek. Further, as per the evidence given by the doctor, who treated the appellant, he sustained only simple injury. But on the other hand, the deceased sustained grievous injury and consequently died. Moreover, as per the rough sketch

exhibited by the prosecution, the house in which the appellant is residing and the deceased are situated one by one. Particularly, on the back side of the house no divider is present for partitioning the property. Accordingly, we cannot hold that the appellant came to the place of occurrence with intension to kill the deceased.

5. In this case, as per the complaint given by P.W.1 during the time of occurrence, so many persons are present in which 2 persons are examined as P.Ws.3 and 4. In entire evidence, they did not say anything about the holding of the weapon by the deceased. Moreover, as per the evidence given by P.W.7 doctor, who treated the appellant, he sustained only the abrasion, if really a person is attacked by another person by using the knife, there cannot be any chance for sustaining the abrasion. Accordingly, this Court is not in a position to believe the contention of appellant's counsel that the appellant has assaulted the deceased for the purpose of saving his life(self defence).

6. Secondly, the appellant's counsel contended as per the evidence of P.W.1, the complaint had been received by the police officer after the death of Kannan, but the case has been registered under Section 307 IPC. Further, he added that the printed FIR was received by the Magistrate belatedly, but the reason for delay is not explained by the prosecution. Thereby, in the said circumstances, the appellant is entitled for the relief of acquittal.

7. It is true in the cross-examination of P.W.1, she gave evidence that after admitting in the Government General Hospital, Pondicherry, the Doctor told that the said Kannan is already died. After receiving the said information, the police officer attached with Tirukanur police station came and recorded the statement. So according to the said evidence after the death of Kannan, the police came there and received a complaint.

8. On the other hand, the mother of the deceased and other eye witnesses P.W.3 and 4 clearly stated that after sustaining injury, the deceased immediately admitted in the Hospital from which he referred to Jipmer Hospital and thereafter, again he referred to Pondicherry Government General Hospital.

9. In the said situation, it is not a disputed fact, that the alleged occurrence happened on 29.08.2005. Further death had happened in the Government General Hospital on 02.09.2005. In this regard, P.W.14 R.Senthi Kumar, Sub Inspector of Police,

who registered a case stated in his evidence as on 29.08.2005 when he was in Tirukunur police station, at about 3.00 p.m., he received information from the Jipmer Hospital through the telephone. Further, he received a intimation memo under Ex.P.18. After receiving the intimation memo, he went to the Jipmer hospital and then only he came to know that the injured was already referred to the Government General Hospital, Puducherry.

10. Accordingly, as per the said evidence, everything happened on 29.08.2005 itself. Moreover, the alleged FIR was received by the Magistrate on 30.08.2005 at about 5.00 pm before the death of deceased. The said circumstances shows that the complaint was received by the police officer only on 29.08.2005.

11. Furthermore, for knowing the occurrence, a whole reading of the entire deposition is necessary. In the said situation, it is not necessary to took the particular evidence given by P.W.1 with regard to the lodging of complaint before the police officer. As per the evidence of P.W.14 he registered a case on 29.08.2005 at about 23.00 hours. So it could be possible or receive the same by the Magistrate on 30.08.2005 at about 5.00 pm. Moreover, the occurrence had witnessed by so many persons, the delay in reaching the Court is not fatal to prosecution.

12. Now, on going through the cross-examination of P.W.1 to 4, it is not in a position to impeach the evidence given in the chief examination in respect of the assault made by the appellant. Further the Doctor, who conducted the post-mortem gave evidence in support of the evidence given by the eye witness and gave opinion in support of prosecution. So entire evidence given by the prosecution witness is in the form of cogent and convincing one.

13. Accordingly, the submissions made by the learned counsel for the appellant is not having any merit in accepting the case of defence. Therefore, without any hesitation this Court holds that the decision arrived by the Second Additional Judge is found correct. However, on going through the entire prosecution case, at the time of occurrence, the appellant is aged 31 years and he is having the family so it is necessary to show some lineancy in awarding sentence. Accordingly, sentence of Rigorous imprisonment modified to 7 years and the fine amount directed by the trial Court is confirmed.

14. In the result, the criminal appeal is dismissed with the above modification.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
Thirukanur Circle
Pondicherry
(Cr.No.180/2005)

2. The II Additional Sessions Judge,
Puducherry

3.The Judicial Magistrate No.1
Puducherry.

4.The Chief Judicial Magistrate,
Puducherry(For Information)

5.The Superintendent,
Ceintral Prison,
Puducherry.

+1cc to T.I.Ramanathan, Advocate sr.no.48163

+1cc to The Public Prosecutor, Puducherry sr.no.47520

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CRL.A.No.609 of 2010
and
M.P.No.1 of 2010

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