

BAIL SLIP

The 1st Appellant/Accused viz., Mani @ Sigamani, Female, Aged 46 Years, W/o Japan @ Mariappan was directed to be released on Bail as per Order Dated 22/04/2013 made in MP.No.1/2013 in CrI. A.No.309/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.309 of 2013

1. Mani @ Sigamani
2. Sanjeevarani

..Appellants/Accused

-Versus-

State: Rep. By
The Inspector of Police,
Pennagaram Police Station,
Crime No.390 of 2011,
Dharmapuri District.

..Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, against the Judgment of conviction passed by the learned Additional District and Sessions Judge, Dharmapuri dated 26.02.2013 in S.C.No.83 of 2012.

For Appellants : Mr.R.John Sathyan

For Respondent : Mr.R.Ramchandran

Government Advocate (CrI.Side)

JUDGMENT

The accused have come forward with this Criminal Appeal, challenging the Judgment dated 26.02.2013 passed in S.C.No.83 of 2012 on the file of Additional District and Sessions Judge, Dharmapuri.

2. By the Judgment dated 26.02.2013, the trial Court convicted the first accused/first appellant for the offence under Section 324 of IPC and sentenced her to undergo rigorous imprisonment for a period of two years with fine of Rs.5,000/-,

failing which to undergo simple imprisonment for a period of six months. As far as the second accused/second appellant is concerned, she was convicted for the offence under Section 323 of IPC and sentenced to undergo rigorous imprisonment for a period of 1 1/2 years together with a fine of Rs.1,000/- failing which to undergo simple imprisonment for a period of three months.

3. The case of the prosecution is that on 24.08.2011 at about 7.30 p.m., while the deceased was taking his dinner in front of his house, the first accused was sweeping the floor in front of her house with broom and the dust emanated therefrom deposited on the meals in the plate of the deceased. The deceased advised the first accused to broom after pouring water. A1 refused the same and scolded the deceased in filthy language and then she attacked him with a brick on his chest and caused injuries. On seeing the first accused attacking the deceased, PW1, wife of the deceased attempted to restrain, but she was attacked by A-2 with a wooden due to which PW1 sustained injuries. Both the deceased and PW1 were admitted in the hospital and inspite of treatment given, the deceased died on 26.08.2011 at 5.30 p.m at Government Hospital Dharmapuri.

4. On the basis of intimation given by the Government Hospital authorities, Dharmapuri, PW9, Sub-Inspector of Police reached the hospital on 25.08.2011 and based on the statement given by the deceased, he handed over the complaint to PW8, Sub-Inspector of Police, who registered the case in Crime No. 390 of 2011 for the offence under Sections 294(b), 323 and 324 of IPC as against the accused 1 and 2. PW8, thereafter, proceeded to the scene of occurrence, drew a rough sketch and also recorded the statement of the witnesses. PW8, on the basis of the statement so recorded, arrested A-1 and remanded her to judicial custody. On 26.08.2011, on the basis of information that the deceased died, he handed over the investigation in the case to PW13, Inspector of Police, who altered the case from 294 (b), 322 and 323 to 302 of IPC. The altered first information report was marked as Ex.P18. During the course of investigation, PW13 arrested A-2 on 27.08.2011 and remanded her to judicial custody. Upon completion of investigation, a charge sheet was filed before the learned Judicial Magistrate. As the case is required to be tried by a Court of Sessions, the case was committed to the file of the learned Sessions Judge, Dharmapuri.

5. Before the Sessions Court, though the appellants pleaded not guilty, the trial Court has framed charges under Sections 294(b), 304(ii) and 324 of IPC.

6. Before the trial Court, in order to prove the case of the prosecution, on the side of the prosecution, as many as 13 witnesses were examined and 21 exhibits were marked and two

Material Objects were exhibited. After perusing the records and witnesses, the trial Court convicted the accused 1 and 2 as mentioned above. Aggrieved by the judgment of the learned Sessions Judge, the accused have preferred the present appeal before this Court.

7. The learned counsel for the appellants would submit that the witnesses examined on the side of the prosecution are interested witnesses and based on their statement, the Court below ought not to have convicted the accused. Admittedly, there is no evidence to suggest that due to the injuries sustained by the deceased by reason of the first accused hurling the brick, he died. The Doctor, PW11 did not even state that the injuries sustained by the appellant in his chest was the cause of his death. The learned Judge failed to consider these aspects to convict the first accused under Section 324 of IPC. Similarly, the second accused has caused simple injuries to PW1 when PW1 attempted to come to the rescue of the deceased, while so, the conviction and sentence imposed as against the second accused is excessive and it is liable to be set aside. The learned counsel for the appellants would further submit that the occurrence took place on 24.08.2011, the deceased and PW1 were admitted on the same day, however, after receipt of first aid, inspite of the advice given by PW11, the Doctor, they left the hospital without getting treatment. However, the First Information Report was registered by PW8 only on 26.08.2011 in which it was stated that the complaint was given by the deceased while he was taking treatment from the hospital and it is nothing but a falsehood. In any event, there is a delay in registering the complaint and it vitiates the case of the prosecution.

8. The learned Public Prosecutor would submit that PW1, PW2 and PW5 have categorically stated that the first accused attacked the deceased with brick on his chest which is clearly indicated in the postmortem report as the cause of his death. The postmortem report clearly reveal that the deceased had sustained injuries on his third and fifth rib. The evidence of PW1, PW2 and PW3 would clearly indicate that there was a quarrel between the first accused and the deceased during which PW1, who came to the rescue of the deceased was assaulted by PW2 and she also sustained injuries. Therefore, both the deceased and PW1 were admitted in the hospital. Therefore, through the oral and documentary evidence it was proved that the deceased and PW1 have sustained injuries and those injuries were caused by none other than the accused 1 and 2. Having regard to the specific overt act as against the accused, the learned trial Judge has rightly convicted the accused 1 and 2. In fact, the learned trial Judge has not convicted the first accused for the offence under Section 304 (ii) of IPC but only convicted her for the offence under Section 324 of IPC.

9. Heard, Mr.R.John Sathyan, the learned counsel for the appellants and Mr.R.Ravichandran, the learned Government Advocate (Crl.Side) for the respondent.

10. Admittedly, appellants on the one hand and the deceased and his wife PW1 are neighbor. There was a quarrel between the accused and the deceased and it was clearly spoken to by PW3 and 5. It is also clearly stated in the evidence of PW3 and 5 that at the time of occurrence, A-1 hit the deceased with a brick on his chest and when PW1, wife of the deceased, attempted to intervene, she was assaulted by the second accused with a wooden log. Thus, the deposition of PW1 is corroborated by PW3 and 5. Further, the Doctor, PW11, who examined the deceased and PW1 at the time of their admission, has clearly deposed about the nature of injuries sustained by the deceased and PW1. Even as per the Postmortem Certificate issued by the Doctor, PW11 the deceased died due to Acute Myocardia infraction. Thus, it is evident that due to the injuries sustained by the deceased in his chest, by reason of hurling of the brick by the first accused, he died two days after sustaining the injury. Thus, the prosecution has successfully proved the ingredients of Section 324 of IPC committed by the first accused. Similarly, the specific overt act as against the second accused is also clearly proved by examining PW3 and 5 as well as the deposition of Doctor, PW11 who treated the PW1. Of course, PW11 has deposed that the injuries sustained by PW1 are simple in nature. Therefore, as against the second accused, the prosecution has proved that she had committed the offence contemplated under Section 323 of IPC. Therefore, this Court is of the view that the Judgment passed by the trial Court needs no interference.

11. However, having regard to the fact that the accused are women and there is no past antecedent against them and that they have committed the offence during a wordy quarrel, this Court is of the view that while confirming the conviction imposed on them by the trial Court, the sentence alone can be reduced to a period of one year. Accordingly, while confirming the conviction imposed on the accused 1 and 2, the sentence alone is reduced to a period of one year.

12. Accordingly, the Criminal Appeal is partly allowed.

Dna

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
Dharmapuri.

2.The Inspector of Police,
Pennagaram Police Station,
Crime No.390 of 2011,
Dharmapuri Distirct.

COPY TO:- 1. The Public Prosecutor, High Court, Madras.

2. The Section Officer, Crl. Sec. High Court, Madras.

KR/19/11/18

Cr1.A.No.309 of 2013



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