



Bail Slip

The Appellant in CRL A.623/13 ,namely Narayanan Aged 53 years S/o.Govindan was directed to be released on bail as per order dated 24.09.2013 and made in MP.NO.1/13 IN CRL A.NO.623/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2018

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.623 of 2013

Narayanan

...Appellant

Vs.

State rep. By
The Inspector of Police,
Panjapalli Police Station,
Dharmapuri District.
(Crime no.46/11)

...Respondent

This Criminal Appeal filed under Section 374 Code of Criminal Procedure to set aside the judgment dated 14.08.2013 made in S.C.No.29 of 2012 on the file of the learned Additional District and Sessions Judge, Dharmapuri.

For Appellant : Mr.R. Thirugnanam

For Respondent:Mr.R.Ravichandran
Government Advocate (Crl. Side)

J U D G M E N T

This Criminal appeal has been filed against the judgment dated 14.08.2013 in S.C.No.29 of 2012 on the file of the learned Additional District and Sessions Judge, Dharmapuri.

2. The case of the prosecution is that the accused 1 to 3 are brothers. The 4th accused is son of the first accused. The 5th Accused is the wife of 2nd accused. The 6th accused is the wife of the first accused. The accused 8 and 9 are sisters of 1st accused. The accused 10 is relative of the first accused. On 26.05.2011, at about 6.00 P.M., A.5 and A.9 came to the house of deceased



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Krishnamoorthi and quarreled with respect to damage of fence by the deceased Krishnamoorthy by riding a tractor. Thereafter, at 7.00 p.m., the A.1 to A.10 went to the house of the deceased with the common object to kill the deceased Krishnamoorthy and assaulted him and other witnesses. The A.1 Narayanan assaulted the deceased Krishnamoorthy with iron pipe on his head. The A.2 Govindaraj assaulted Krishnamoorthy with wooden log. The A.3 to A.10 assaulted the deceased with hand and leg. A.1 Narayanan assaulted him with iron pipe on left side chest. The A.2 Govindaraj assaulted the deceased with wooden log on his chest. The A.3 Krishnan and A.4 Venkatesh assaulted with wooden log and thereby the accused A.1 to A.10 committed the offence under Section 147, 148, 149, 302, 302 read with 149, 326, 323 of IPC.

3. The respondent police registered a complaint in Crime No.46 of 2011. After investigation, the respondent police filed the charge sheet against the A.1 to A.10 before the learned Judicial Magistrate, Palacode in P.R.C.No.5 of 2012. After completing the legal formalities, the learned Magistrate committed the case, along with the accused to the learned Principal Sessions Judge, Dharmapuri. In turn, the learned Judge made over the case to the learned Additional District and Sessions Judge, Dharmapuri. Since the accused denied the allegation against him, the learned Additional District and Sessions framed charges against the accused for offence under Sections 147, 148, 149, 302, 302 read with 149, 326 read with 149, 323 and 323 read with 149 IPC. The prosecution, in order to prove the case, before the trial Court, examined as many as 15 witnesses P.W.1 to P.W.15, marked Ex.P.1 to P.20, produced the material object M.O.1 to M.O.9 and examined Court witness C.W.1 and Ex.C1 and Ex.C2 were marked.

4. After examination of witnesses on the prosecution side, when incriminating circumstances were culled out from the prosecution witnesses, all the accused denied as false. The accused have not chosen to examine any witness on their side.

5. After considering the oral and material evidence let in by the prosecution, the learned Additional Sessions Judge acquitted the accused 2 to 10 on the ground that the prosecution has not established the offence against them beyond reasonable doubts. The A.1, was acquitted for all the said charges. However, the learned Additional Session Judge held that there was no previous enmity between the accused and deceased and therefore, Section 302 is not attracted. The assault was due to sudden provocation during the quarrel. Therefore, he was convicted under Section 304 (ii) IPC and sentenced to undergo 5 years rigorous imprisonment and fine of



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tractor and assaulted the deceased. P.W.4, tried to intervene and also he sustained injury and he was admitted in the hospital Palacode and thereafter, admitted in the Government Hospital, Dharmapuri for treatment. The deceased died on the spot. The respondent police registered a case against the appellant and nine others and filed a charge sheet against them.

12. During trial, in order to prove the case of the prosecution, on the side of the prosecution, examined as many as 15 witnesses P.W.1 to P.W.15, marked Ex.P.1 to P.20, produced the material object M.O.1 to M.O.9 and examined and examined Court witness C.W.1 and Ex.C1 and Ex.C2 were marked.

13. The learned counsel for the appellant has also raised the contention that there are two complaints in this case. The second complaint was suppressed which creates suspicious. The prosecution has not come with clean hands. The mere fact that there are two complaints will not help the accused in this case. After receiving complaint and registering FIR, investigation is immediately started, and therefore, the existence of two complaint if at all, is of no help to the accused.

15. Just because the learned Sessions Judge granted benefit of doubt to the Accused 2 to 10. It need not necessarily be extended the same benefits to the appellant also. P.W.4 is injury witness. He sustained injuries, when he tried to intervene and stopped the appellant while assaulting the deceased. Credence should be given to the injured witness. P.W.4 has clearly stated that the appellant took the iron pipe from the tractor and attacked the deceased. When he tried to intervene, he was also assaulted by the appellant and he also sustained injury and was admitted in hospital for treatment. Such a clear statement cannot be over sighted by the Courts. The trial Court has taken note of this and convicted the appellant.

16. The trial Court has acquitted the appellant under Section 302 IPC however, convicted him for the offence under Section 304(ii) IPC, since there was no motive on the part of the appellant to finish of the deceased. The whole incident occurred, due to certain provocation. During the verbal duel in fit of rage, the appellant took an iron pipe from the tractor and attacked the deceased. There was no pre-meditation on the part of the appellant to finish of the deceased. This Court is in conformity with the decision of the trial Court to convicting the appellant under Section 304(ii) IPC.

17. On going through entire evidence and the records, this Court is of the view that the prosecution



has established the case against the appellant beyond the reasonable doubt and the trial Court fully justified in convicting and sentencing the appellant as mentioned above.

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18. In the result, the Criminal Appeal fails and the same is dismissed. The trial Court is directed to secure the accused to undergo remaining period of sentence.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge, Dharmapuri.
2. Do thro the Chief Principal District and sessions Judge, Dharmapuri.
3. The Inspector of Police, Panjapalli Police Station, Dharmapuri District.
4. The Superintendent, Central Prison, Vellore Dt, Vellore
5. The Judicial Magistrate, Palacode, Dharamapuri District

+1cc to Mr.R. Thirugnanam , Advocate SR.No. 65280

Cr1.A.No.623 of 2013

vp (CO)

A.SK(19/08/2019)