

Bail Slip

The Petitioner/Accused namely Nagu @ Nagaraj, aged 23 years, S/o.Settu, to be released on Bail as per order dated 11.07.2018 made in Bail as per order dated 11.07.2018 made in Crl.MP.No.3754 of 2018 in Crl.A.No.152 of 2018 on the file of the Honourable Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Criminal Appeal No.152 of 2018

Nagu @ Nagaraj
S/o.Settu

... Appellant/A1

Versus

State represented by
Inspector of Police,
Katpadi Police Station,
Katpadi, Vellore District.
Crime No.81 of 2013

.... Respondent

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure against the judgment of learned I Additional District and Sessions Judge, Vellore, dated 20.02.2018 passed in S.C.No.59 of 2014.

For Appellant : Mr.G.Vinodh Kumar

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

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J)

The challenge in this appeal is to the judgment of learned I Additional District and Sessions Judge, Vellore, dated 20.02.2018 passed in S.C.No.59 of 2014, convicting the appellant for offence under Section 302 IPC and sentencing him to undergo life imprisonment and fine of Rs.5,000/-, in default, to undergo one year rigorous imprisonment.

2. The case of the prosecution is as follows:

- (i)appellant/A1 and A2 are residents of Katpadi, so also, the deceased Chokkalingam. On 16.01.2013, in the celebration of Pongal festival at Pillaiyar Koil Street, both accused were making commotion by dancing, which was opposed by deceased Chockkalingam. Hence, taking revenge against the deceased Chokkalingam, both accused, on the same day at about 09.30 p.m., in front of one Sankar's house, hit the deceased Chokkalingam on his chest using a wooden log. Immediately, PWs.1 to 3 took the deceased Chokkalingam to hospital, where the Doctor declared him 'brought dead'.
- (ii)PW-1, wife of the deceased, proceeded to Katpadi Police Station on 17.01.2013 and preferred a complaint to PW-9, Sub-Inspector of Police, who registered a case in Crime No.81 of 2013 for offence under Section 302 IPC. PW-9 forwarded the FIR to Court and copies thereof to higher officials.
- (iii)PW-10, Inspector of Police, took up investigation and proceeded to the scene of occurrence at about 08.00 hours on the same day and prepared observation mahazar [Ex.P2] and rough sketch [Ex.P11] in the presence of PW-4 and another witness. PW-10 conducted inquest on the body of deceased in the presence of Panchayatdars between 03.30 hours and 05.00 hours. The inquest report is Ex.P12. After completion of inquest, he sent the body of deceased through PW-6, constable, for postmortem.
- (iv)The postmortem report [Ex.P7] reads as follows:

'DEPARTMENT OF FORENSIC MEDICINE
GOVERNMENT VELLORE MEDICAL COLLEGE
POSTMORTEM CERTIFICATE NO.51/13 DT 17.1.13

Regarding the body of a male aged about 65 years named CHOCKALINGAM. Requisition received at 12.05 PM on 17.01.13 from the Inspector of Police Katpadi PS with his Cr No 81/13 Body in charge of Police Constable No.HC 1113 Sridharan.

IDENTIFICATION AND CASTE MARKS:

1. A BM ® side of abdomen 2. A BM (L) thigh

The body was first seen by the undersigned at 12.15 PM on 17.1.13. Its condition then was rigor mortis present all over the body. Postmortem commenced at 12.15 PM on 17.01.13.

APPEARANCE FOUND AT THE POSTMORTEM:

Moderately nourished body of a male. Finger and toenails blue.

No external injury.

On dissection of chest and abdomen: The soft tissues beneath the left breast show fresh contusion (about 12 hours old) 2 cm diameter.

Pericardial cavity contains 15 ml of blood-stained fluid.

Heart: Enlarged with predominant LVH. LV Wall thickness 2.5 cm. All the three major coronaries show florid atheromatous changes. The LAD artery shows critical occlusion > 90% of its lumen 2 cm away from its origin. The myocardium show many fibrous scars (old healed myocardial infarcts) Peritoneal and pleural cavities: Empty. Lungs: Congested and edematous. Hyoid bone: Intact. Stomach: Contains 150 ml of food particles with nil specific smell. Mucosa: Normal. Small intestine: Nil specific. Liver, spleen and kidneys: Congested. Bladder: Empty. Brain: Congested.

VISCERA PRESERVED FOR CHEMICAL ANALYSIS.

HEART PRESERVED FOR HISTOPATHOLOGY EXAMINATION

OPINION:

RESERVED PENDING REPORT OF CHEMICAL EXAMINER AND HISTOPATHOLOGY EXAM.'

- (v) PW-10, in continuation of his investigation, recovered MO-2, Shirt and MO-3 Half-pant of the deceased Chockalingam under Ex.P4, Report.
- (vi) PW-10 arrested both accused at about 10.00 a.m. on 17.01.2013 at Katpadi lake bund. On the basis of the confession of the accused recorded in the presence of PW-5, Village Administrative Officer, PW-10 recovered MO-1-Wooden log. PW-10 sent the accused to Court for judicial custody and forwarded the properties recovered to Court under Form-95.
- (vii) PW-10 examined PW-8, Doctor, who conducted postmortem and other witnesses and recorded their statements. On completion of investigation, he filed a charge sheet against the accused for offence under Section 302 IPC.

3. Since A2 was a juvenile, the case against him was split-up and the records were sent to Juvenile Court for further proceedings.

4. To substantiate its case against the appellant/first accused, the prosecution examined PWs.1 to 10, and marked Exs.P1 to P12 besides marking M.Os.1 to 3. On questioning under Section 313 Cr.P.C., the appellant/A1 denied the charges. None were examined on behalf of the appellant/A1 and no exhibit was marked.

5. On consideration and appreciation of the entire evidence adduced by the prosecution, the trial Court, has found the appellant/A1 guilty and, therefore, convicted and sentenced him as stated above. Against such finding, the present appeal has been filed by A1.

6. Heard learned counsel for appellant and learned Additional Public Prosecutor appearing for respondent and perused the material records, including the Judgment passed by the trial court.

7. Learned counsel for appellant/A1 submits that there are lot of contradictions in the evidence of prosecution witnesses and those contradictions would prove that the occurrence could not have happened in the manner put forth by the prosecution. In support of the said submission, learned counsel took this Court through the evidence to substantiate his submission.

8. According to the learned counsel for the appellant, PWs.1, 2 and 3 are none other than wife and daughters of the deceased. No independent witness has been examined by the prosecution, especially, from the house of Sankar, in front of whose house the occurrence allegedly took place. The non-examination of independent witness casts a serious doubt in the prosecution case. PW-8, Doctor, who conducted postmortem, has stated that there was no external injury on the body of deceased, which rules out the prosecution story of deceased having been assaulted by a wooden log. PW-8, in his opinion Ex.P9, has stated that the deceased would appear to have died of complications of coronary artery disease precipitated by injuries obtained by him, which clearly shows that it is not a case of murder and at worst, the act of pushing down had caused the death. Neither the intention nor the knowledge on the part of appellant/A1 in order to murder the deceased, was established by the prosecution. Learned counsel submits that even as per the prosecution case only a single blow using a wooden log on the chest of the deceased is said to have been given by accused. Even if it is taken as true, the appellant would be guilty of the offence under Section 304(ii) IPC only. In support of such submission, learned counsel relied on the judgment of the Supreme Court reported in 2004 Cri.L.J. 1405 (Chowa Mandal and another v. State of Bihar). In that case, the accused, who was agitated by unwanted questioning by the deceased gave a single lathi blow on the head of the deceased. On the facts of the said case, it has been held that the incident in question occurred only on the spur of the moment without any intention of causing death or of causing injury knowing that the injury was likely to cause death. Thus, it has been held in that case that the offence would fall under Section 326 read with 34 IPC and not under Section 302 read with 34 IPC. Submitting as above, learned counsel contends that the prosecution has not proved its case beyond all reasonable doubt and prays this Court to acquit the appellant. However, it is submitted by the learned counsel appearing for the accused/appellant that in the event of this

Court not satisfied with the submissions towards acquitting the accused, this Court may consider modification of offence for which the appellant was convicted by the trial court by taking into account that there was no mens rea on the part of the appellant to cause the death of the deceased.

9. Per contra, learned Additional Public Prosecutor appearing for the respondent submits that the motive on the part of the appellant has been established by the prosecution through examination of PWs.1 to 3, who have witnessed the quarrel between the deceased and accused. Merely because they are wife and children of the deceased, their evidence cannot be discarded. Further, PW-8, Doctor, who conducted post-mortem, has clearly opined that the deceased would appear to have died of complications of coronary artery disease, precipitated by injuries obtained by him. Though PW-8, Doctor, has stated that there is no external injuries on the body of the deceased, from the opinion of the Doctor, it is clear that there is every possibility that the single blow caused by accused on the chest of the deceased, has resulted in his death. Moreover, the evidence of PWs.1, 2 and 3 are cogent and convincing and on the basis of the same, the trial court is justified in convicting the appellant. Submitting as above, learned Additional Public Prosecutor prayed for dismissal of the appeal filed by the appellant.

10. This Court has considered the rival submissions made by the counsel for both sides. Though learned counsel for appellant contends that the evidence of PWs.1 to 3 are not reliable, since they are interested witnesses, this Court finds that the occurrence took place in a festival and on their way to home, the accused intercepted the deceased and assaulted him. Merely because the prosecution witnesses 1 to 3 are related to the deceased, their evidence cannot be ignored. The fact remains that the prosecution witnesses 1 to 3 have accompanied the deceased at the time of the occurrence and therefore, their evidence can be looked into by this Court.

11. We have noticed that the incident had taken place when the Villagers were commemorating Pongal festival. Even according to PW1, wife of the deceased, on 16.01.2013, Pongal festival was commemorated in their Village and such festival was witnessed by several persons. In connection with such festival, it is stated that the accused were dancing in the temporarily erected stage. This was objected to by the deceased and this had apparently led to a quarrel. This quarrel is the reason for the occurrence. Even in the cross-examination of PW1, she has stated that at the time of such quarrel, around 50 to 100

persons were present and they have witnessed the quarrel. Though 50 to 100 persons were present, the prosecution had chosen to examine only PW1 to 3 who are wife and children of the deceased, to substantiate the guilt against the accused. We are of the view that all those who are present in the scene of occurrence need not be examined especially when some of the witness to the occurrence may not come forward to depose against the accused. In such event, it cannot be said that merely because the prosecution did not examine all those who were present in the scene of occurrence, it would vitiate the case of the prosecution.

12. Further, from the manner in which the prosecution had projected it's case, one could infer that the occurrence had taken place in a spur of moment. The attack by the accused is preceded by a wordy quarrel and the accused/appellant, who could not control his senses, had indulged in an attack against the deceased. At the time of occurrence, the accused, even according to PW1, had caused a single blow with a wooden log on the chest of the deceased. The appellant had caused such blow on the chest of the deceased with the knowledge that such act was likely to cause death, but without any intention of causing death. The fact that the appellant had caused injury on the chest of the deceased, also stands established by the deposition of the Postmortem Doctor. We also take note of the fact that at the time of occurrence, the deceased was aged about 65 years.

13. For all these reasons, we find the appellant guilty of offence under Section 304 (ii) IPC and not under Section 302 of IPC, as has been concluded by the trial court. In the above facts and circumstances, interest of justice will be met if the sentence imposed on the appellant is modified into one of rigorous imprisonment for a period of five years.

14. Accordingly, the conviction imposed on the appellant in the Judgment dated 20.02.2018 passed by the learned I Additional District and Sessions Judge, Vellore in S.C.No.59 of 2014 for the offence under Section 302 of IPC is modified into one under section 304 (ii) IPC and the accused/appellant is directed to undergo rigorous imprisonment for a period of five years. The fine imposed by the Court below is confirmed and shall be relatable to offence under section 304(ii) IPC. The period of incarceration already undergone by appellant/accused shall be given set off under Section 428 Cr.P.C. The Trial Court is directed to secure the presence of the accused towards serving the remaining period of sentence.

15. With the above modification, the Criminal Appeal is partly allowed.

Sd/-
Assistant Registrar(CCC)

/True Copy/

Sub Assistant Registrar

To

- 1.The I Additional District and Sessions Judge,
Vellore.
 - 2.The Judicial Magistrate,
Katpadi.
 - 3.The Chief Judicial Magistrate,
Vellore(for information).
 - 4.The Inspector of Police,
Katpadi Police Station,
Katpadi, Vellore District.
 - 5.The Superintendent,
Central Prison, Vellore.
 - 6.The Public Prosecutor,
High Court, Madras.
- Copy to : The Section Officer, Criminal Section,
High Court of Madras, Chennai.

+1cc to Mr.G.Vinodhkumar, Advocate SR.No.101876

AKM/19.03.2020 /7P-9C/ सत्यमेव जयते

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