

Bail Slip

The appellant in Criminal Appeal 109 of 2012 Viz., Kandasamy S/o. Palaniyandi Gounder, was directed to be released in bail as per order of this Court dated 07/09/2012 and made in MP 2 of 2012 in CrI.A.109 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :14.02.2019

Pronounced on :28.02.2019

Coram:

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

Criminal Appeal No.109 of 2012

Kandasamy

.. Appellant

/versus/

State by Inspector of Police,
Paramathi Police Station,
Crime No.158 of 2009,
Namakkal District.

.. Respondent

Criminal Appeal has been filed under Section 374(2) of the Criminal Procedure Code against the conviction imposed in the judgment dated 24.01.2012 made in S.C.No.52 of 2010 on the file of the Principal Sessions Court, Namakkal sentencing him to undergo ten years imprisonment and a fine of Rs.10,000/- i/d to undergo one year imprisonment for the alleged offence under Section 304 (ii) of IPC is sought to be challenged before this Court.

For Appellant :Mr.E.C.Ramesh

For Respondent :Mrs.Kritika Kamal.P, GA

J U D G M E N T

The appellant herein is the elder brother of the deceased Mani @ Karuppannan. On 25.04.2009 at about 07.00 a.m, near the house of the deceased Mani @ Karuppannan due to previous enmity in dividing the property, the appellant hit his brother Mani @ Karuppannan with wooden log on his abdomen. When he was taken to the hospital, Mani @ Karuppannan was declared brought dead by the Doctor.

2. Based on the complaint given by Ramayee, wife of Mani @ Karuppannan, First Information Report was registered on 25.04.2009 at 11.30a.m. The wooden log used in the crime were recovered under mahazar. The accused voluntarily surrendered before the Judicial Magistrate on 28.07.2009. After recording the statement of witnesses and collecting the post-mortem report, final report for the offence under Section 302 of IPC was filed.

3. The trial Court has examined 11 witnesses as PW-1 to PW-11 and marked 15 exhibits as Exs.P1 to P15. The wooden log was marked as M.O.1. Relying upon the evidence of PW-1(Wife of the deceased), PW-2 (daughter of the deceased) and witness to the crime PW-5 (VAO), witness to mahazar for seizure of M.O.1 and the Post-mortem Doctor evidence, the trial Court held that the accused has caused death of Karuppannan using the wooden log (M.O.1) as weapon. The seat of attack is in the stomach. The offence has been committed with knowledge that the injuries are sufficient to cause death, though without any intention to cause death. Therefore, it is culpable homicide not amount to murder. So, held him guilty of offence under Section 304 (ii) of IPC instead of Section 302 of IPC.

4. The present appeal is preferred on the ground that PW-1 and PW-2 are wife and daughter of the deceased Karuppannan. The deceased and the accused had animosity with each other over sharing the property. PW-1 and PW-2 are relatives and interested witnesses. Their evidence cannot be taken as gospel truth without corroboration. While the other independent witnesses PW-3 and PW-4 turned hostile, the recovery of weapon was not proved through the witnesses. The time regarding the receipt of the First Information Report is contradictory. The Doctor, who gave first aid to the victim was not examined. The Doctor, who treated the deceased, was not examined to ascertain whether the death was only due to the injuries sustained by the appellant.

5. The learned counsel appearing for the appellant referring the evidence of the post-mortem Doctor [PW-6] and the post-mortem certificate Ex.P6 would submit that PW-1, the wife of the deceased the deceased fell down and PW-2 the daughter of the deceased have deposed that the deceased fell down after the accused stabbed the deceased on his abdomen with the wooden log. They have not said any other overt act of violence on the head of the deceased. Whereas in the post-mortem certificate, the Doctor has noticed externally contusion in the left cheek and fracture of the skull on the left side base in a rectangular shape 1.5 x 1 x 1.5x1 cm size. Therefore, he would contend that the post-mortem Doctor has not found any external injuries over the abdomen where the witnesses alleges the seat of attack. It is also opined by him that if anybody attack with M.O.1 wooden log in the stomach, he will not sustain injuries on the skull.

The learned counsel would submit that the post-mortem report reveals that the deceased had scars on his abdomen. Therefore, the death likely would not have caused due to the alleged attack by the accused in the abdomen of the deceased.

6. Per contra, the learned Government Advocate would submit that the prosecution witnesses PW-1 and PW-2 are eye witnesses to the crime. The wooden log used by the accused to attack the deceased has been recovered and marked as M.O.1. Same is identified by the eye witnesses. The post mortem Doctor has opined that the injuries found in the body of the deceased would have caused by M.O.1. The scars found externally on the abdomen support the case of the prosecution. The deceased and the accused are blood brothers. The accused had knowledge that causing any bodily injuries on his abdomen likely to cause his death. PW-2[Sumathi] in her chief examination has deposed that the accused stabbed her father with the wooden log shouting "he will not survive for his one blow" (ஒரு அடி அடித்தால் தாங்க மாட்டாய்). Therefore, the trial Court finding about the knowledge of the accused is sustainable.

7. The learned Government Advocate, relying upon the Explanation (1) to Section 299 of the Indian Penal Code would state that the act of the accused fall under the definition of culpable homicide. In view of the Exception (4) to Section 300 of the Indian Penal Code, it is culpable homicide not amounting to murder. So, the trial Court judgment convicting the accused for the act done with the knowledge to cause bodily injury likely to cause death is in accordance with law, weight of evidence and all probabilities.

8. The evidence placed before the Court provides the following facts:

- (1)Mani @ Karuppannan died due to homicide on 25.04.2009.
- (2)PW-1 Ramayee is the wife of the deceased.
- (3)Pw-2 Sumathi is the daughter of the deceased.
- (4)The post mortem report discloses

(a)Base of the skull on the left side fractured.

(b)Laceration in the liver 5 x 1 x4 cm

(c)Appendix absent. RPM scare 11 cm in the middle of the abdomen.

(i)A curvilinear scar 7 cm size on the left side of the lower abdomen and

(ii)Linear scar 5 cm of the right side lower abdomen.

The noting (c) indicates the appendix of the deceased surgically remove during his life.

9. In the light of these facts, if one look at the testimony of PW-1 and PW-2, on the day of occurrence while Mani

@ Karuppannan the deceased was putting fence in his land, his brother Kandasamy (the accused) came and picked quarrel. He stabbed the deceased on his abdomen with wooden log. The deceased fell down. PW-1 and PW-2 had deposed that the incident was witnessed by PW-3 (Perumal) and PW-4 (Sivasami). They took Mani @ Karuppannan to Vellur Government Hospital. At the hospital, the Doctor declared him brought dead.

10. PW-3 and PW-4 were declared hostile by the prosecution. They have deposed that on hearing scream from the house of the deceased, they rushed to the spot. They found Mani @ Karuppannan lying unconscious. They took him to the hospital. They have only corroborated the later part of PW-1 and PW-2 deposition. They have not implicated the accused. So rightly declared hostile and cross examined.

11. PW-5 [M.Subramani] Village Administrative Officer is the witness to observation mahazar (Ex.P4) and the recovery mahazar (Ex.P3). The wooden log [M.O.1] was recovered under the mahazar by the Investigating Officer [PW-11]. PW-1[Ramayee] witness to the occurrence has identified M.O.1

12. PW-6 is the post-mortem Doctor. His report is marked as Ex.P7. As noted earlier as per the Doctor's opinion, two major injuries found internal were the cause for the death. One on the skull, another lacerated wound in the liver. The witnesses to the occurrence have not said anything about how the injuries on the cheek and the skull fracture, occurred. According to PW-6, these injuries are related to the contusion on the left cheek. Through these evidence the prosecution has proved that the accused has caused two stabs on the abdomen of the deceased with wooden log which has caused no external injuries, but a lacerated wound in the liver 5 x 1x1 cm. Though PW-3 and PW-4 have not implicated the accused, the evidence of PW-1 singularly enough to hold that the accused caused the said injury to the deceased. There is reason for the wife of the deceased to screen the truth and falsely implicate her brother-in-law in the crime.

13. The legal point now to be considered is whether the act of the accused attracts Section 304 (ii) of IPC, if yes, whether the accused deserves 10 years Rigorous Imprisonment.

14. Section 299 and Explanation (1) of the Indian Penal Code reads as under:

299. Culpable homicide: Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with knowledge that he is likely by such act to cause death, commits

the offence of culpable homicide.

Explanation-1: A person who causes bodily injury to another, who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

15. Section 300 of the Indian Penal Code and Exception 4 reads as under:

"300. Murder---Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

2ndly---If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

3rdly---If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

4thly---If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

Exception 1....

Exception 2....

Exception 3....

Exception 4. Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and with the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation: It is immaterial in such cases which party offers the provocation or commits the first assault.

16. Section 304 of the Indian Penal Code reads as follows:

"304. Punishment for culpable homicide not amounting to murder---
Whoever commits culpable homicide not

amounting to murder, shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

17. The act of the accused has caused the death of the accused. The accused has gone to the house of the deceased objected for putting fence and then, stabbed on his abdomen. The oral evidence of PW-1 and PW-2 is corroborated by the medical evidence. It appears to have happened without premeditation in a heat of passion upon a sudden quarrel. The knowledge to the accused that such injury is likely to cause death has to be necessarily inferred from the other proven facts such as the accused and the deceased are blood brothers, living in same village. The deceased had underwent surgery, so causing injury on the abdomen may likely to cause the death.

18. In Mahesh Balmiki v. State of Madhyapradesh reported in 1999 SC 3338=2000(1)SCC 319, the Hon'ble Supreme Court has held that "Adverting to the contention of a single blow, it may be pointed out that there is no principle that in all cases of single blow Section 302 of IPC is not attracted. Single blow may, in some cases, entail conviction under Section 302 IPC., in some cases under Section 304 IPC and in some other cases under Section 326 IPC. The question with regard to the nature of offence has to be determined on the facts and circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the the injury is cased and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him."

19. In the instant case, the facts and circumstances and the nature of the injury caused by the accused squarely falls under Section 304(ii) of IPC. The trial Courts, on this aspect has not erred either on facts or law. While exercising its discretion of imposing the sentence, the trial Court has

imposed ten year Rigorous Imprisonment and fine of Rs.10,000/-.

20. The learned counsel appearing for the appellant submits that the appellant has buried his animosity with his deceased brother's family and repents for his act.

21. In this case, as far the plea of reducing the period of imprisonment is concerned, it is appropriate to extract the following observation of the Hon'ble Supreme Court in Thangasamy v. The State of Tamil Nadu (judgment dated 20.02.2019). The Hon'ble Supreme Court has observed as follows:-

As regards this plea for modification of sentence, this Court traversed through the principles of penology, as enunciated in several of the past decisions including those in State of M.P. v. Ghansyam Singh: (2003) 8 SCC 13 as also in Dalbir Singh v. State of Haryana: (2000) 5 SCC 82; and, while observing that the facts and circumstances of the case show 'a despicable aggravated offence warranting punishment proportionate to the crime', this Court found no justification for extending the benefit of probation or for reduction of sentence. On the question of sentencing, this Court re-emphasised as follows:-

84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances."

85. The principle of proportionality in sentencing a crime-doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in

determination of sentencing the crime-doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence. (underlining supplied for emphasis)"

22. Considering his age and circumstances under which the crime committed, it is sure that it was not committed in a cruel or unusual manner. It has occurred in a fit of anger during wordy quarrel between the brothers also. Out of the two injuries, one on the skull and another on the liver. The prosecution has proved the second injury alone was caused by the accused and not the first injury. In these circumstances, the period of sentence needs modification.

23. In the result, this Criminal Appal is partly allowed. The conviction for the offence under Section 304 (ii) of IPC is confirmed. Sentence of 10 years Rigorous Imprisonment is modified as three years Rigorous Imprisonment with fine of Rs.10,000/-. In default, six months Rigorous Imprisonment. The period of sentence already undergone shall be set off under Section 428 of Cr.P.C. Bail bond, if any, executed by the accused shall stand cancelled. The accused/appellant is directed to surrender before the trial Court within a period of 30 days from the date of receipt of a copy of this order to undergo the remaining period of imprisonment.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ari

To

- 1.The Principal Sessions Judge,
Namakkal.
- 2.The Inspector of Police,
Paramathi Police Station,
Namakkal District.
- 3.The Judicial Magistrate,
Paramathi.
- 4.-do- Thro' The Chief Judicial Magistrate,
Namakkal.

5.The Superintendent,
Central Prison,
Coimbatore.

6.The Public Prosecutor,
High Court, Madras.

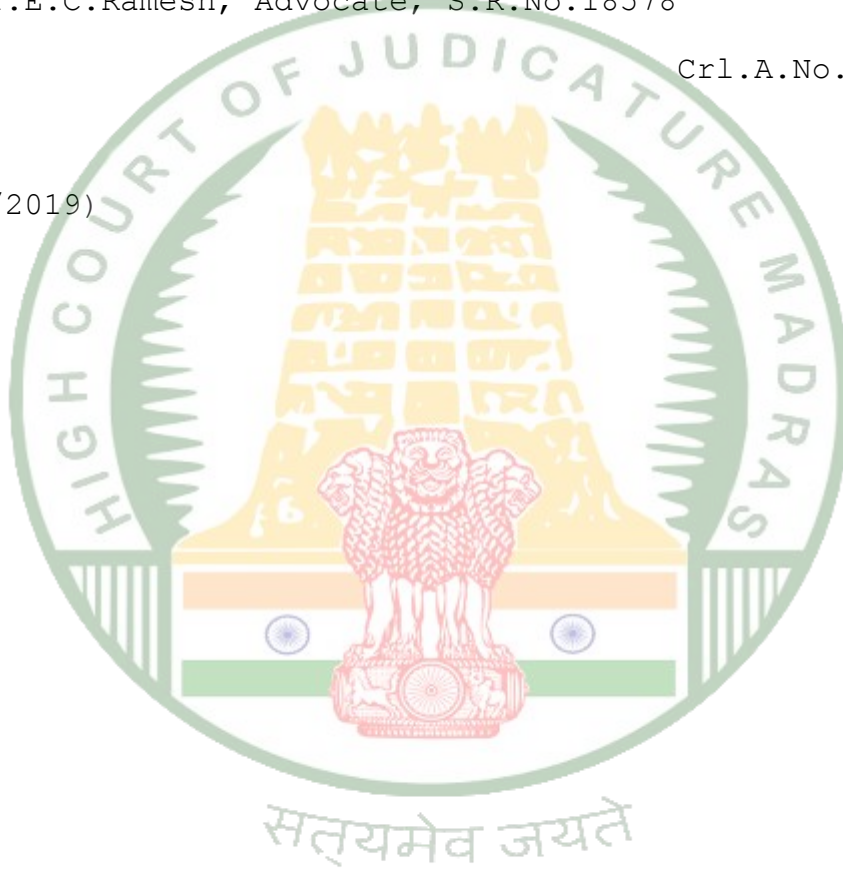
7.The Section Officer,
Criminal Section,
High Court, Madras -104.

+1cc to Mr.E.C.Ramesh, Advocate, S.R.No.18578

Crl.A.No.109 of 2012

VD(CO)

RRS (05/04/2019)



WEB COPY