

Bail Slip.

The Appellant/Accused No.1 namely B.Jayabal,S/o.Balu, was directed to be released on bail as per order of this court dated 09.11.2012 made in Crl.M.P.2/2012 in Crl.A. 350/2012 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.02.2019	Pronounced on: 06.03.2019
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Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.350 of 2012

B.Jayabal,
S/o.Balu,
Residing at
II Cross, Rajivi Gandhi Nagar,
Karuvadikuppam, Lawspet,
Puducherry. ... Appellant/Accused
No.1

/versus/

State represented by:
Inspector of Police,
Lawspet Police Station,
Lawspet, Puducherry.
(Cr.No.15 of 2012). ... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 375(2) of Criminal Procedure Code, to set aside the conviction and sentence made in Judgment dated 05.06.2012 in S.C.No.49 of 2011 on the file of II Additional Sessions Judge, Puducherry, and acquit the appellant/accused.

For Appellant : Mr.S.Suresh
For Respondent : Mr.Balamurugane
Additional Public Prosecutor
(Pondy)

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J U D G M E N T

The Appellant herein is the first accused who stood trial before the Sessions Court along with two other accused for offence under Section 302 of I.P.C r/w 34 I.P.C. The trial Court acquitted the other two accused. Held the present appellant guilty for offence under Section 304(ii) of I.P.C and sentenced him to undergo 10 years R.I and fine of Rs.1,000/- in

default 6 months R.I.

2. Aggrieved by the above judgment, the present appeal is filed.

3. The brief facts of the prosecution case is that on 30.01.2010 at about 9.30 hours near the 2nd cross, Veterinary Hospital Street, Karuvadikuppam, Lawspet, Pondicherry. Jayabal (A1), Balu (A2) and Jayaprakesh (A3) murdered one Sakthivel using knives. Lakshmi wife of the deceased Sakthivel gave a complaint to Lawspet Police on 30.01.2010 at about 21.45 hours. She informed the police that Meena is the sister of the deceased, living with her husband Balu (A2) sons Jayabal (A1), Jayaprakesh (A3) and daughter Sowmiya was not in good relationship with them. Whenever Meena and Balu had difference of opinion, Meena used to come to her brother's house (deceased Sakthivel) and report about her husband and sons. In this connection, Sakthivel used to go to the accused house and reprimand them. Therefore, there was animosity between the deceased and the accused persons. On 16.01.2010 when quarrel broke out between Meena and her husband Balu (A2), Meena left her marital home and came to her brother's house. Knowing that the accused persons have left her major daughter Sowmiya at the sister's house of Balu (A2) in Tindivanam, Meena went there on 30.01.2010 and brought her daughter Sowmiya along with her to the deceased house. Knowing the same, the accused persons came to the deceased house at about 2.00 p.m and picked quarrel with Meena. They questioned her why she brought Sowmiya with her. The deceased Sakthivel intervened and came in support of his sister Meena. At that time, the accused persons scolded Sakthivel. Snatched the child Sowmiya from Meena and tried to leave the place. When Sakthivel resisting them and tried to prevent them from taking away the child Sowmiya with them, Mr.Balu (A2) told his sons, only if Sakthivel is done away, their problem will come to an end. Saying so, Balu(A2) caught hold of the right hand of Sakthivel and Jayaprakesh caught hold of the left hand of Sakthivel. Jayabal took the knife and stabbed Sakthivel on his right side neck and slashed. On hearing the scream of Lakshmi (wife of the deceased) public gathered. The accused persons threatened them if anybody come near them, will face the same fate and fled from the place. Sakthivel was taken to the Government General Hospital, Puducherry in an Auto. The Doctor declared him as brought dead.

4. After registering the First Information Report containing the above details, investigation was taken up by the Inspector of Police Mr.Veerabalakrishnan (PW.13). He conducted the inquest. Prepared sketch of SOC, recovered bloodstain soil and other incriminating materials connected with the Crime. Recorded the statement of witnesses. Arranged to take photographs of the SOC and the dead body of Sakthivel.

Collected the Post-mortem report. The accused persons were secured based on their confession statement, the knife M.O.1 was recovered in the presence of independent witnesses. Arranged for recording statements of witnesses by Judicial Magistrate. After collecting the post-mortem report and the serology reports, he filed the final report.

5. Based on the final report, the trial Court has framed charges under Section 302 r/w 34 of I.P.C against A1, A2 and A3.

6. To prove the charge before the trial Court, the prosecution has examined 13 witnesses, marked 31 Exhibits and 16 material Objects were marked.

7. The trial Court acquitted A2 and A3. Convicted A1 for offence under Section 304(ii) of I.P.C. The present appeal is filed on the ground that the judgment of the trial Court is against law and evidence. The trial Court has failed to give reason for its decision and grossly erred in holding the accused guilty of offence under Section 304 (ii) of I.P.C. Since the occurrence has taken place between close relatives due to dispute between husband and wife, the conviction is liable to be set aside.

8. In view of the discrepancies and the contradictions between the evidence of PW.1, PW.2 and PW.8, the trial Court ought to have acquitted Jayabal (A1) along with A2 and A3. The evidence of PW.2 that Balu (A2) attacked the deceased with stick. Thereafter, A2 and A3 caught hold the deceased, enabling A1 to stab the deceased is a new version introduced by PW.2. It is contrary to the complaint and evidence of PW.1. Therefore the trial Court ought to have acquitted this appellant extending the benefit of doubt. The material object M.O.1 does not tally with the description of weapon alleged to have been used by the assailant. The accused persons went to the house of the deceased to bring back their child. There was no intention to cause any hurt. Since the deceased intervened and picked quarrel with the accused persons and prevented them from taking back Sowmiya, the incident has occurred. The possibility of deceased fallen drunk and sustained injury due to stabbing of sharp material lying on the floor is not ruled out. The injury found on the deceased does not correlate with the weapon M.O.1 which renders the case of the prosecution unbelievable.

9. Per contra, the learned Additional Public Prosecutor (Puducherry) appearing for the respondent/state would submit that PW.1 who is wife of the deceased is witness to the crime. She has cogently narrated the events prior to the occurrence and at the time of occurrence. The assailants have come to the house of the deceased. They forcibly taken away the child Sowmiya from her mother Meena. When the deceased protested,

Balu (A2) and Jayaprakash (A3) in furtherance of the common intention caught hold of her husband's hand, Jayabal (A1) stabbed him on the neck. PW.1 has identified the weapon used by A1. PW.2 is father of the deceased. He is also the father-in-law of A2. He has witnessed the occurrence and implicated A1. The minor contradictions in the evidence of PW.1 and PW.2 does not impeach anyway the credence of his evidence. Therefore, the trial Court judgment needs no interference.

10. Heard the respective counsels and perused the records and Exhibits.

11. The relationship between the accused persons and the deceased is not in dispute. PW.1 to PW.3 and PW.8 are related to deceased and accused. The evidence of eye witnesses are consistent, cogent and unimpeachable without any variance. The eye witnesses have deposed that on the day of occurrence the accused persons came to the house of the deceased, tried to takeaway the child Sowmiya with them. The deceased has protested, so when A2 and A3 has caught hold of the deceased, the second accused Jayabal stabbed him on the neck. The post-mortem report Ex.P.7 and the evidence of PW.6 Dr.R.Balaraman indicates that the deep injury on the neck, could have caused the death.

12. This Court finds that this appellant had carried weapon along with him, when he and others went to bring back the child Sowmiya. He has stabbed the deceased at his neck which is in all probability likely to cause death. He cannot plead that he never had the knowledge that such injury will caused death.

13. The trial Court have gone at length analysing the evidence and law, after due consideration has held the accused guilt of offence under Section 304(ii) of I.P.C. The finding and reasoning is based on the evidence. So it does not require any interference.

14. Therefore, the Criminal Appeal is dismissed. The conviction and sentence passed by the Learned II Additional Sessions Judge, Puducherry is hereby confirmed. The trial Court is directed to secure the appellant and commit him to prison to undergo remaining period of sentence.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate No.I, Pondicherry.
2. Do Thro The Chief Judicial Magistrate, Pondicherry.
3. The Learned II Additional Sessions Judge, Puducherry.
4. Do Thro The Principal Sessions Judge, Pondicherry.
5. The Inspector of Police, Lawspet Police Station, Lawspet, Puducherry.
6. The Superintendent, Central Prison, Puducherry.
7. The District Collector, Pondicherry.
8. The Director General of Police
Pondicherry.
9. The Public Prosecutor, High Court, Madras.
10. The Section Officer, Criminal Section,
High Court, Madras.

Criminal Appeal No.350 of 2012

SKV(CO)
SP(05/04/2019)

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