

Bail Slip

The Petitioner/Accused(i) Vellingiri S/o.Chinnana was directed to be released on bail as per order of this court dated 10/12/2012 in M.P.No.2/2012 in CrI.A.No.431/2012 on the file of High Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.02.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.A.No.431 of 2012
and M.P.No.2 of 2012

Vellingiri

... Appellant

Vs.

The State rep.by
The Inspector of Police,
M-1, Periyanaickenpalayam Police Station,
Coimbatore District.
Crime No.650/2008

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to setting aside the conviction and sentence passed against the appellant/accused in S.C.No.259 of 2010 dated 15.06.2012 on the file of First Additional District & Sessions Judge, Coimbatore and acquit him from the charges.

For Appellant : Mr.S.Saravanakumar

For Respondent : Mrs.Kritika Kamal

Government Advocate

JUDGMENT

The appeal has been filed by the appellant challenging the judgment of the trial Court holding him guilty of the offence under Sections 304(i), 323 and 324 IPC. Though, the appellant was charged for the offence under Section 302 IPC, the trial Court has concluded saying that the accused has caused homicide of Selvaraj in a heat of moment to expiate the right of defence of his property. But in the context, it has to be held that he has exceeded the limit of his right. Aggrieved by the judgment of the conviction and sentence, the present appeal is preferred.

2. The brief facts of the case is as follows:-

On 29.11.2008, at about 8.00 p.m., Selvaraj (deceased) along with his son Mahendran, Narayanasamy, Sagayam and others went to the land which was in occupation of the accused, which is admittedly a poramboke piece of land. They had gone over to that place with a view to dispossess the accused and put up thatched shed. On hearing that a group of people landed in the property, the accused went to the scene of crime with Koduval. He has indiscriminately attacked Selvaraj-PW.1, Narayanasamy and Sagayam. While Selvaraj succumbed to injury, Narayanasamy and Sagayam sustained simple injury. They were treated by a doctor at Coimbatore Medical College hospital. On 02.12.2008 at about 11.30 a.m., the accused presented before V.A.O. and gave an extra judicial confession to him. That was recorded by the V.A.O. He took the accused to the police station. Pursuant to the confession statement of the accused, the weapon was recovered.

3. Before the trial Court, the prosecution has examined 13 witnesses and 19 Exhibits were marked along with 4 Material Objects. Relying upon the evidence of PW.1, PW.2 and PW.10 and the other material evidence, such as Accident Register Ex.P.10, P.11 and P.12 coupled with the admissible portion of the confession statement given by the accused which lead to the recovery of M.O.1, Seizure Mahazar Ex.P.9 was prepared. The Trial Court has found the accused guilty. However for the reason above stated, the trial Court gave the benefit of doubt under the right of private defence, which has been exercised by the accused in excess than warranted. So convicted him for an offence under Section 304 (i) instead of 302 IPC.

4. The learned counsel appearing for the appellant placed his arguments on the following grounds:

Referring the accident register Ex.P.11 and Ex.P.12, which is the earliest document on the side of the prosecution which has come into existence on 29.11.2008 at about 11.35 p.m., he would submit that the injured witnesses have not named the accused. In fact, they have informed the doctor who recorded the accident register, that they were allegedly assaulted by 15 unknown persons. Whereas the prosecution has charged the appellant alone. Admittedly the accused and the injured victims are known to each other but not named the accused as the assailant. The injured persons were assaulted by 15 unknown persons and not by the accused. Secondly, the learned counsel would say that the FIR, which is now placed before this Court in Ex.P.13 would not have been the FIR based on the first information. There is delay in registering the FIR and the prosecution has not explained the cause for the delay. While PW.1 has stated that the police from the hospital out post enquired him and he has informed about the

occurrence on 29.11.2008. The FIR has been registered only on 30.11.2008 and the same was forwarded to the Court much later. The learned counsel would submit that the accused had sustained injury and same is reflected in Ex.P.16. The prosecution has not properly investigated about the cause of injury and failed to place it before the Court, the true facts which they found during the course of investigation.

5. The unexplained injury on the accused coupled with the evidence shows that PW.1, PW.2 and others along with the deceased Selvaraj had tried to encroach upon the land in possession of the accused and the previous enmity between them has lead to foist the case with false material. The trial Court has erred in relying upon the extra judicial confession given by the accused to the V.A.O., which is not properly corroborated by any material facts. The improbability a single person causing the injury to three persons as projected by the prosecution has not been properly appreciated by the Court below.

6. Per contra, the learned Government Advocate appearing for the State would submit that Sagayam, Narayanasamy and Selvaraj (deceased) were admitted at Government Medical hospital, Coimbatore on 29.11.2008. PW.7-Dr.Balamurugan, who was the duty doctor at that time, has examined them and admitted them for further treatment. The deceased Selvaraj was brought to the hospital by his son Mahendran. He was the first informant. He was examined as PW.1 by the prosecution. While Sagayam complained about assault by 15 unknown persons using wooden logs, no external injury was noticed by the doctor. On physical examination of Narayanasamy, PW.7 has noticed a cut injury on the left finger and left side of his neck, abrasion on the right side shoulder. Post mortem of Selvaraj discloses cut injury on the skull and lacerated wound on left cheek region. While the other two injured persons were treated for the injury and got discharged, Selvaraj succumbed to injury on 29.11.2008 at about 21.00 hours. The injured witnesses have identified the assailant. Though in the accident register, it is recorded that they were assaulted by 15 unknown persons, that is not a piece of evidence to prove the offence but only to prove the injured person visited the hospital and the treatment given by the hospital. Collaterally in the column history of injury is recorded by the doctor. Therefore, the discrepancy found in the accident register will not over ride a fact/information concluded during the investigation. Regarding the contention of the learned counsel appearing for the appellant that the earliest complaint was suppressed and the FIR was not registered in time, the learned Government Advocate would submit that Ex.P.3 printed FIR would clearly show that for the occurrence took place on 29.11.2008 at about 20 hours, after receiving the reports from the hospital and the statement from the victim,

case has been registered at 13.00 hours on 30.11.2008 and the same has been forwarded to the Judicial Magistrate as express FIR. The Judicial Magistrate has received and noted the time and fixed his seal, which reveals that the express FIR reached the Magistrate on 01.12.2008 at about 3:30 a.m.. In such circumstances, the contention of the learned counsel for the appellant that there was delay in forwarding the FIR has no legs to stand.

7. The learned Government Advocate, relying upon the judgment of the Honourable Supreme Court rendered in Onkarnath Singh and others Vs. State of Utter Pradesh reported in (1975) 3 SCC 276, would submit that the injury found on the accused and noted in the accident register Ex. P.16 were post incident injuries. Even according to the accused, he has stated to the Doctor that he sustained said injury while bleeding from the scene of crime after committing the crime. The presence of injury found on the accused per se will not give inference that he is sustained the injury during the occurrence of that injury caused to the accused has provoked the accused to cause death of the Selvaraj and to cause injuries to other witnesses.

8. In contradiction to the above submission of the learned Government Advocate, the learned counsel for the appellant would submit that the right of private defence has to be inferred from the material facts placed before the Court and the accused need not even plead right of private defence. The prosecution witnesses admit that they went to scene of crime with weapons and they were warned by the accused. Even few weeks earlier when similar attempts was made it was prevented by the accused. The accused was cultivating the piece of land. He has every right to protect the land. Even assuming the injury found in the body of the deceased as well as PW.2 and PW.10 were caused by this accused, the appellant has every right to defend his property and therefore, the trial Court ought not have found him guilty even for the offence under Section 304(ii) IPC. In support of his submission the learned counsel would refer the judgment of the Hon'ble Supreme Court rendered in Bhagwan Swaroop Vs. State of Madhya Pradesh reported in AIR 1992 Supreme Court 675.

9. Heard the submission made by the counsel for the respective parties.

10. In this case the scene of crime is a Government poramboke land, which is admittedly under the occupation and enjoyment of the accused. The evidence of PW.1, PW.2, PW.3 and PW.10 discloses the fact that these witnesses, along with Selvaraj and others went SOC on 28.11.2008 at about 7 p.m., with intention to put thatched shed. These witnesses further deposed that while they were prepared to unload the materials, the

accused came with Aruval declaring that only if he murder them things will get set right. He has caused head injury with Aruval to Selvaraj. When PW.2 Narayanasamy tried to protect Selvaraj, accused has attacked PW.2 with the same Aruval, which has caused cut injury on the left hand finger and on left neck. The post mortem report of Selvaraj also indicates that he has sustained head injury and died. The accident register given for the injuries sustained by PW.2, which was marked as Ex.P.12 correlates with the injury spoken by the injured witnesses. While the presence of the accused at SOC and his overt act causing fatal injury to Selvaraj and simple injury of PW.2 and PW.10 established cogently. These two witnesses and the other corroborated facts such as confession statement of the accused, recovery of M.Os based on the said confession statement has strengthened the case of the prosecution.

11. The learned counsel appearing for the appellant would submit that the injury found on the accused as mentioned in Ex.P.16 wound certificate prove the accused sustained injuries during the course of attack and the same has been totally suppressed by the Investigating Officer. The trial Court has also failed to give adequate waitage to such evidence.

12. As far as Ex.P.16 and the injuries found on the accused, the eye witnesses have deposed that after assaulting Selvaraj, PW.2 and PW.10 the accused ran away from the scene of crime. How and when, by whom the injury found in Ex.P.16 was caused has not been proved by the prosecution for the simple reason that in his statement to the doctor, the accused has said he sustained the said injury while he fall down in the ground. From the nature of the injury and in the absence of any positive material which the accused could have placed before the Court to explain the injury who is recorded in Ex.P.16 has to be accepted. The accused alone have the exclusive knowledge about the private hospital where he got treated for his injury. He has not shared before the Court the said fact. Obviously, the accused wanted to exercise his right of silent which cannot be faulted. When he wants to take advantage of the right of private defence, he has to let in positive evidence to that effect. It is his option to choose between right of silence or to disclose the reason for his act through material evidence. Having opted to exercise the right of silence, Court cannot stretch its imagination to infer right of private defence, beyond the material placed it.

13. In this case, the material placed by the prosecution as such clearly prove that the accused has caused death of Selvaraj and injured PW.2 and PW.10. The Trial Court to some extent, has taken note of the manner in which attack on the deceased and PW.2 and PW.10 has taken place. The trial Court has rightly considered that the case will fall under the exception to

culpable homicide amounting to murder. Hence, convicted the accused under Section 304 (i) IPC.

14. This Court finds no material to defer with the reason given by the trial Court. As far as sentence is concerned the trial Court has directed the accused to undergo Rigorous Imprisonment for a term of 10 years for the offence under Section 304 (i) IPC holding that the homicide has taken place during heat of moment.

15. The learned counsel appearing for the appellant would state that at the time of occurrence the appellant was 50 years old, now he has crossed 60 years. Therefore, the term of imprisonment may be modified and lesser sentence may be imposed. Taking into account, the incident has taken place because of the greed to grab the public property. The accused who has already in enjoyment of the public property want to protect the same, whereas the deceased party want to grab the land from him, In this fight Selvaraj has lost his life.

16. In the said circumstances, this Court is of the opinion that it would be suffice to sentence the accused to undergo five years Rigorous Imprisonment for the offence under Section 304 (i) IPC. The rest of the offence, the sentence is confirmed. The respondent shall secure the accused and committing him to undergo the remaining period of sentence and the period of sentence already under gone shall be set off under Section 428 IPC.

17. In the result, the appeal is partly allowed, confirming the conviction passed against the appellant by the trial Court vide judgment dated 15.06.2012 in S.C.No.259 of 2010 on the file of the First Additional District and Sessions Court, Coimbatore and modifying the sentence imposed on the appellant shall be reduced from 10 years R.I to 5 years R.I. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The First Additional District and Sessions Court, Coimbatore

2.The Public Prosecutor,
High Court, Madras.

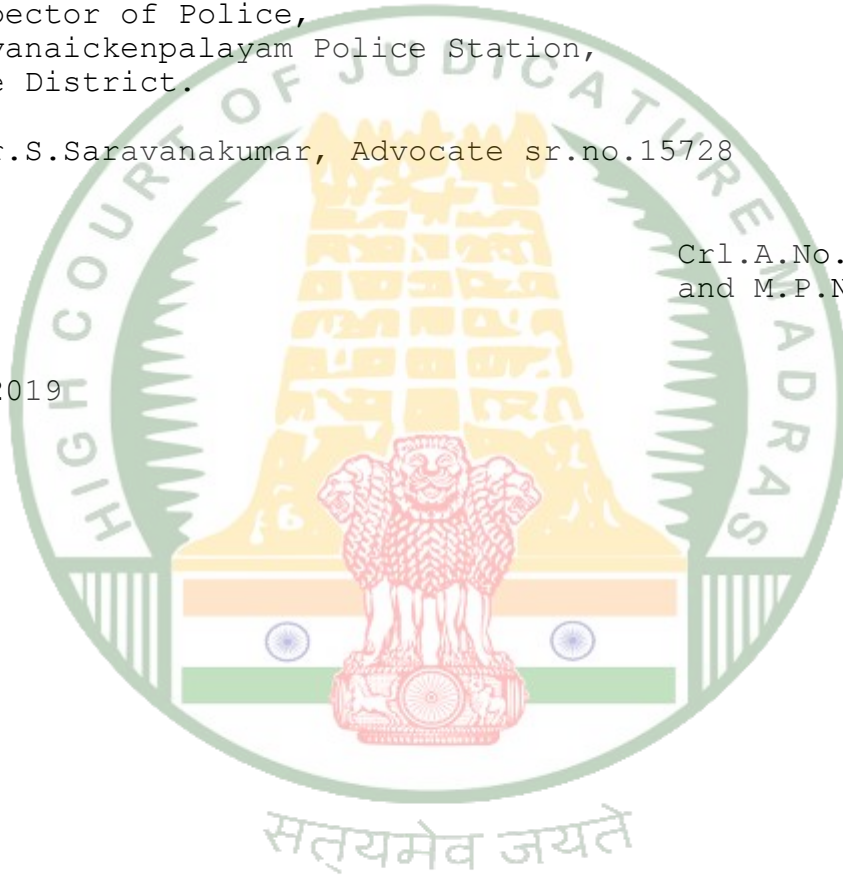
3.The Superintendent,
Central Prison,
Coimbatore.

4.The Inspector of Police,
M-1, Periyanaickenpalayam Police Station,
Coimbatore District.

+lcc to Mr.S.Saravanakumar, Advocate sr.no.15728

Crl.A.No.431 of 2012
and M.P.No.2 of 2012

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