

Bail Slip

That the Appellant accused namely Govindan S/o.Mari Gounder was directed to be released on bail in CrI MP No.1/2015 in CrI.A.No.179/2015 vide order of this Court dated 15.04.2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.179 of 2015

Govindan

...Appellant/A1

-Vs-

State represented by

The Deputy Superintendent of Police,
Harur, Dharmapuri District.

(Cr.No.153 of 2010 of Pappireddipatti
police station)

...Respondent/Complainant

This Criminal Appeal is filed under Section 374 of Cr.P.C. praying to set aside the conviction and sentence imposed on him by the learned Principal Sessions Judge, Dharmapuri by judgment dated 03.03.2015 in S.C.No.42 of 2011 and acquit the appellant by allowing this appeal.

For Appellant : Mr.Johnsathyan

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (CrI.Side)

JUDGMENT

This criminal appeal has been filed against the judgment of conviction passed by the learned Principal District & Sessions Judge, Dharmapuri, by judgment dated 03.03.2015 in S.C.No.42 of 2011.

2 The respondent police registered a case against the appellant and three others in Crime No.153 of 2010 and the appellant herein was tried for the offence punishable under Sections 302 r/w 34, 307 of IPC and Section 5(2)(v) of SC & ST (Prevention of Atrocities) Act, 1989. After completing investigation, the respondent police laid a charge sheet before the learned Judicial Magistrate, Pappireddipatti, which was taken on file in P.R.C.No.11 of 2010 and the Magistrate, after completing procedural formalities, since the offence charged against the accused is triable only by the Court of Sessions, committed the same to the learned Principal District and Sessions Judge, Dharmapuri, which was taken on file in S.C.No.42 of 2011.

3 Before the trial Court, in order to prove the case of the prosecution, P.Ws.1 to 12 were examined and Exs.P1 to 27 were marked besides materials objects 1 to 10. After completing prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses and put before the accused, they denied as false. On the side of the defence, D.Ws.1 to 5 were examined and Exs.D1 to D5 were marked. After trial, the learned Principal District and Sessions Judge, by judgment dated 03.03.2015 acquitted all other accused from all the charges levelled against them and convicted this appellant alone and sentenced him to undergo rigorous imprisonment for a period of ten years with fine of Rs.5000/-, in default, to undergo rigorous imprisonment for a further period of three months for the offence under Section 304 (2) of IPC. Aggrieved against the conviction, the first accused has preferred this criminal appeal before this Court.

4 The learned counsel appearing for the appellant would submit that defacto complainant and his family members are the aggressors to the occurrence. When they tried to pass through the patta land of the accused and claims it as a pathway, they were only prevented by the accused and the deceased only pushed down the accused and the accused also sustained injuries, which was not properly explained by the prosecution. The defacto complainant and his family members went to the house of the appellant and picked up quarrel with the accused and attacked them and the accused only prevented the same and in the occurrence, all are sustained injuries. The learned Sessions Judge, even though, has given a finding that the pathway claimed by the defacto complainant is a patta land of the appellant, failed to consider the fact there was no cart track and the same was established only after the occurrence, since family members of the defacto complainant had insisted the Government officials to lay the cart track. Even though, the learned Sessions Judge found the appellant not guilty of offence punishable under

Section 302 r/w 34, 307 of IPC and Section 3(2)(v) of SC ST (Prevention of Atrocities) Act, convicted him for the offence under Section 304(2) of IPC, the learned Sessions Judge has failed to consider the fact the defacto complainant and his family members are the aggressors to the occurrence and erroneously convicted the appellant. Further, case in counter was also filed against the defacto complainant and his family members, but that was not properly investigated by the respondent police and proceeded against them.

5 The learned Sessions Judge has failed to note the fact that when there is dispute with regard to the pathway and civil suit is also pending between the parties, the alleged occurrence had taken place nearby the house of the appellants, which shows that the defacto complainant and his family members came to the house of the appellants and attacked and therefore they are aggressors to the occurrence. Even though the learned Sessions Judge found the other accused not guilty, but, convicted this appellant alone for the offence under Section 304(2) of IPC. The Doctor/ P.W.6, who treated the appellants and the defacto complainant and the deceased, has clearly stated that the appellant also sustained injuries, for which no explanation was offered by the prosecution. The copy of the Accident Registers Exs.D1 & D4 would go to show that the accused also sustained injuries. No independent witness was examined in this case to prove the case of the prosecution and all are interested witnesses only. Admittedly, the pathway, which was claimed by the defacto complainant, is the patta land of the accused and in order to get wrongful gain, they foisted false case against the appellant and his family members. Prosecution has failed to investigate the matter in a fair manner. The learned counsel has placed his reliance on the decisions rendered by the Hon'ble Supreme Court reported in 2018 (5) SCC 231 (Kumar vs. State of Tamilnadu) stating that when the accused also sustained injuries and the same has not been explained by the prosecution and motive also not established, the conviction recorded by the Court is not sustainable in law. The learned Sessions Judge failed to consider the factual aspect and even the defacto complainant and his family members themselves admitted that two of the accused sustained injuries, and erroneously convicted this appellant, which warrants interference.

6 The learned Government Advocate (Cr1.Side) appearing for the respondent police would submit that the deceased, who is mother of the defacto complainant/P.W.1, on the day of occurrence, to reach their land, had passed through the common porambokku situated nearby the house of the appellant. The appellant put thorns on the pathway and when the deceased questioned the act of the appellant and his family members scolded her and degraded by uttering his caste and attacked her

and the defacto complainant and other family members and during the scuffle, the appellant also sustained injuries. The case in counter filed based on the complaint lodged by the appellant and his family members was closed as 'mistake of fact'. The appellant has not challenged the closure report. P.Ws.1 to 3 are the injured eye witnesses and one of the injured witnesses died due to stab injuries caused by the appellant. The Doctor/P.W.5, one who treated the injured witnesses had issued Ex.P6 wound certificate, which reveal that the injuries sustained by the witness is grievous in nature and the Doctor/P.W.10, one who done autopsy on the body of the deceased had stated that the deceased died only due to the stab injuries and has Postmortem report, which was marked as Ex.P15. Therefore prosecution has proved its case beyond reasonable doubt. Further the official witness the Village Administrative Officer/P.W.5 has also supported the case of the prosecution deposing that he has witnessed the inspection made by the Investigating Officer, Mahazar and arrest and confession of the accused. The other official witnesses have also stated that the defacto complainant and his family members are belong to Adi Dravida community and the appellant belongs to Vanniyar community and they also made quarrel with the defacto complainant. The appellant attacked the deceased on the vital part with knife and caused death to the deceased. Since the occurrence between the parties is sudden provocation during the altercation, even though prosecution has proved all the charges against the accused, trial Court found the other accused not guilty and convicted this appellant alone for the offence under Section 304(2) of IPC and imposed sentence, which does not call for any interference.

7 Heard the learned counsel appearing on either side and perused the materials available on record.

8 Case of the prosecution is that on 16.06.2010 at about 4.00 p.m. when P.W.3 and the deceased were proceeding towards their land from eastern side, near the house of the appellant, the accused put thorn on the way and the when the same was questioned by the deceased, the accused scolded. On hearing noise, the family members of the deceased came to the spot and there was some altercation between the parties and with an intention to cause death to the deceased the appellant stabbed her and the deceased died. In the course of same transaction, when the other witnesses prevented the appellant, he voluntarily assaulted P.W.2 with knife on his right shoulder and head. Prosecution witnesses have specifically stated that 2nd and 4th accused have caught hold of the deceased Kamsala and the appellant stabbed her, since the weapon used in the occurrence is deadly weapon and the appellant attacked on the vital part of

the decease, she died. One of the injured witnesses, who is the defacto complainant/P.W.1 has clearly spoken about the overt act attributed against the appellant and the other accused. But, however, neither the victim, nor the state has filed appeal against the acquittal of the other accused. P.W.5, the Village Administrative Officer, witnessed observation Mahazar and Rough Sketch. The Doctor/P.W.10, who conducted autopsy on the body of the deceased has found that the deceased sustained stab injuries and due to the same, she died. Therefore evidence of P.Ws.1, 2, 5, 6, 10 and the medical records, prosecution has proved its case beyond reasonable doubt.

9 It is contended by the learned counsel for the appellant that the case in counter filed by the appellant was not investigated properly by the respondent police and the pathway as claimed by the defacto complaint is a patta land of the appellant and some of the accused had also sustained injuries, which was not explained by the prosecution properly and the defacto complainant is the aggressor to the occurrence. It is seen that the case filed by the appellant was investigated by the respondent police and was closed as 'mistake of fact' and the appellant did not challenge the same either by way filing protest petition or private complaint. Even though the appellant contended that the pathway claimed by the defacto complainant is a patta land of the appellant, they did not produce any document to substantiate the same and the appellant did not even mention the Patta number or Survey number for the same. It is also seen that there is civil suit is pending between the parties and if at all the defacto complainant passed through their patta land, they should have availed their remedy before the Civil Court, where the suit is pending for the dispute and should have not attacked the deceased with an intention to cause death. The citations referred to by the learned counsel appearing for the appellant is not helpful to his case. It is admitted fact that the defacto complainant and his family members demanded the Government to lay the pathway and at their instance, pathway has been laid by the Government after the occurrence in the land which covers under Malai Prombokku, which clearly shows that the pathway is not the patta land of the appellant. However, in the occurrence, the appellant killed the deceased with knife, which was proved by the prosecution as observed by the trial Court. Therefore, the appellant is liable to be punished and the trial Court has convicted the appellant and imposed sentence. This Court, being an appellate Court, while re-visiting the entire evidence found the appellant guilty for the offence punishable under Section 304(2) of IPC and no sound reason or ground to interfere with the judgment of conviction made by the trial Court.

10 In the result, the criminal appeal stands dismissed as devoid of merit and substance. Trial Court is directed to secure the appellant to undergo remaining period of sentence, if any.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

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To

- 1.The Principal Sessions Judge, Dharmapuri.
- 2.The Public Prosecutor, High Court of Madras.
- 3.The Deputy Superintendent of Police,
Harur, Dharmapuri District.
- 4.The Judicial Magistrate,
Pappireddipatti,
Dharmapuri District.
5. The Chief Judicial Magistrate,
Dharmapuri
6. The Superintendent,
Central Prison, Vellore

Copy To:
The Section Officer,
Criminal Section (Records)
High Court, Madras.

Cr1.A.No.179 of 2015

RK(CO)
GMY(01/11/2019)

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