



Bail Slip

Crl.A.Nos.189 and 263 of 2015

The Appellant herein/Accused 1 & 2, namely 1.Kannan and 2.Duraisamy were directed to be released on bail vide order dated 17/06/2015 and 30/04/2015 made in MP.No.1 of 2015 in Crl.A.189 of 2015 and Mp.No.1 of 2015 in Crl.A.No.263 of 2015 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.Nos.189 & 263 of 2015

1.Kannan

... Appellant/A1 in Crl.A.No.189/2015

2.XXXXX(2nd respondent removed vide order dated 04/07/19 made in Crl.A.No.189/15)

Duraisamy

... Appellant/A2 in Crl.A.No.263/2015

Vs.

The State of Tamilnadu represented by
The Inspector of Police,
Mecheri Police Station,
Salem District.
(Cr.No.615/2011)
Appeals

... Respondent in both the

The Criminal Appeals have been filed under Section 374(2) of Cr.P.C, seeking to set aside the judgment in S.C.No.152 of 2014 on the file of the I Additional District & Sessions Judge, Salem, dated 06.03.2015.

For Appellant : Mr.B.Vasudevan in Crl.A.189/2015
For respondent : Mr.T.Shanmugarajeswaran
Govt. Advocate (Crl.Side)
in both th Appeals



COMMON JUDGMENT

These criminal appeals have been filed against the judgment of conviction made by the learned I Additional District and Sessions Judge, Salem, in S.C.No.152 of 2014, dated 06.03.2015.

2 Both the criminal appeals are arising out the same order and the appellants are A1 and A2 and hence both the appeals are disposed of by this common order.

3 Case of the prosecution is that the appellants/A1 & A2 and the deceased are brothers and without consent of the deceased they obtained a gift deed from their father with regard to lands situated near main road. Hence the deceased had been demanded share in the lands gifted to the appellants/accused and hence there was enmity prevailed between them. Therefore, on 31.08.2011 at about 8.30 p.m., at Yeragundapatti Village, Thimirikottai Kattu Valavu, while the deceased was walking to his house, A2 caught hold of the deceased and A1 attacked him with wooden log on his fore head, left chin and face and the deceased fell down on the ground and thereafter A2 attacked him with stone at hip with common intention to commit murder of the deceased and the deceased sustained various injuries, which are grievous in nature and due the same he died.

4 Therefore respondent police has registered a case against the appellants in Crime No.615 of 2011 for the offence punishable under Section 302 against A1 and 302 r/w 34 of IPC against A2 and after investigation, laid a charge sheet before the learned Judicial Magistrate No.II, Mettur, and since the offence charged against the appellants are triable only by the Court of Sessions, the case was committed to the learned I Additional District and Sessions Judge, Salem, which was taken on file in S.C.No.152 of 2014. After completing procedural formalities, the learned Sessions Judge, framed charges against the appellants. In order to prove the case of the prosecution, as many as 13 witnesses were examined and 20 documents were marked besides material objects 1 to 10. After completing prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses and put before the appellants, they denied as false. On the side of the defence D.W.1 was examined and Exs.D1 to D3 were marked. After completing trial, the learned I Additional District and Sessions Judge, acquitted the appellants for the offence under Section 302 and found guilty for the offence under Section 304 (II) of IPC against A1 and 304(II) r/w 34 of IPC against A2 and by judgment dated 06.03.2015, convicted them to undergo rigorous imprisonment for a period of seven years each with fine of Rs.1,000/- each, in default, to undergo simple imprisonment for



a further period of six months. Aggrieved against the said judgment of conviction, both the accused have filed the present appeals separately.

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5 According to learned counsel appearing for A1, the appellant in CrI.A.No.189 of 2015, the dispute is between the brothers and alleged occurrence has taken place purely on sudden provocation and there is no intention or motive. Admittedly the accused and the deceased are blood relatives. Since the drunken deceased i.e. one of the brothers had picked up quarrel with their mother, due to property dispute, the appellants intervened and supported their mother and hence the alleged incident has taken place. Further, at the time of occurrence, since it was night hours, the place was dark and there is no eye witnesses, even though, prosecution has cited P.Ws.1 & 2 as eye witnesses, but on a perusal of their evidence would go to show that after hearing the sound only they came to the place of occurrence. The injuries found on the body of the deceased was not tallied with the evidence of P.Ws.1 and 2 and also with the medical evidences. There is no motive or intention for the alleged occurrence and hence the trial Court has rightly acquitted the appellant for the offence under Section 302 of IPC, but erroneously convicted for the offence under Section 304 of IPC, which warrants interference and the learned counsel prays to set aside the judgment of conviction or atleast to reduce the sentence of imprisonment.

6 According to learned counsel appearing for A2, the appellant in CrI.A.No.263 of 2015, the occurrence place was dark and street lights were not functioning on that day and the eye witnesses of the prosecution might not have seen the occurrence. It was alleged that this appellant had also attacked the deceased with stone at his hip, but, the Doctor P.W.9, who treated the deceased, has stated about the injuries sustained by the deceased and in his evidence, there was no mentioning about the injuries in the hip caused through stone. P.W.1 went to police station and waited for more than three hours and thereafter FIR was registered. There is no overt act as against this appellant and in the AR copy itself it was mentioned that one known person attacked with wooden log and hence there is no mentioning about the other accused and hence implication of this appellant is purely after thought. There is no deadly weapon used in the occurrence, even as per the prosecution also the appellant used stone to attack the deceased, which itself proves that the occurrence has taken place only due to sudden provocation. The trial Court has erroneously recorded conviction against this appellant, which warrants interference.



7 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the deceased and the accused are brothers and due to property dispute, there was a quarrel between them and the appellants/A1 & A2 attacked the deceased. The Doctor, P.W.9, who admitted the deceased in the Hospital, had stated that the death is caused only due to the injuries sustained by the deceased in the head. Even though the learned counsel for A2 contended that P.W.9 the Doctor has not stated anything about the injuries in the hip of the deceased, the Doctor/P.W.8, who conducted autopsy on the body of the deceased has noted that there was injury at hip. P.Ws.1 & 2 are eye witnesses and they have corroborated with each other. The trial Court, since there was no intention, acquitted for the offence under Section 302 of IPC and found guilty for the offence under Section 304(II) and 304(II) r/w 34 of IPC and convicted accordingly, which does not call for any interference.

8 Heard the learned counsel on either and perused the materials available on record.

9 It is seen that the deceased and the appellants/A1 & A2 are brothers and there was property dispute exist between the parties. The drunken deceased, on the date of occurrence, had picked up quarrel with his mother and the appellants intervened and supported their mother. Both the accused had attacked the deceased and caused death. It is contended by the learned counsel for A2 that in the AR copy itself it was mentioned that one known person attacked with wooden log and there is no mentioning about A2. On reading of the complaint itself, it reveal that A1 only attacked the deceased with wooden log and A2 caught hold the deceased and when the deceased fell down on the ground, A2 attacked him with stone at hip. The evidence of Doctors P.W.9, who examined the deceased and P.W.8, who conducted autopsy on the body of the deceased, had clearly spoken about the injuries sustained by the deceased. Therefore, non mentioning of A2 in the AR copy is not fatal to the case of the prosecution. P.Ws.1 & 2 had deposed that after hearing the sound they went to place of occurrence and seen the deceased being attacked by the appellants and immediately taken the deceased to the Hospital and next day morning P.W.1 lodged a complaint against the appellants/accused.

10 P.W.1 had deposed that A1 attacked the deceased with wooden log on the left side face and left hand and A2 attacked the deceased on his hip with stone. The said evidence of P.W.1 was corroborated with the evidence of P.W.2 and P.W.10 and also with regard to the injuries sustained by the deceased, evidence of P.Ws.1 & 2 has corroborated with the evidence of P.Ws.8 & 9 the Doctors. There is no reason to discard the evidence of



P.Ws.1 & 2.

11 A combined reading of the evidence of P.Ws.1, 2, 10 and Doctors P.Ws.8 & 9, prove the fact that the appellants/A1 & A2 attacked the deceased and A1 attacked with wooden log and A2 attacked with stone. It is also reveal that both the accused had not stopped with beating itself, it is seen that A2 attacked the deceased after he fell down on the floor and hence the appellants A1 & A2 gone to the extent till the deceased becomes unconscious. The overtact of A2 that he used stone and attacked the deceased on his hip has been corroborated by the evidence of Doctor P.W.8, who conducted autopsy on the body of the deceased and she has noted the abrasive injury on the left hip of the deceased. Further it is the evidence of P.W.8 the Doctor, that the deceased died only due to the head injury sustained.

12 On reading of the evidence of P.Ws.1, 2, 8, 9, 10, and 12, this Court finds that prosecution has proved its case beyond reasonable doubt. The trial Court, by rightly appreciating the evidence, had convicted the appellants for the offence under Section 304 and 304 r/w 34 of IPC, in which this Court does not find any perversity. There is no compelled reason or sound ground to set aside the judgment of conviction made by the trial Court. However, considering the nature of offence and the relationship between the parties, this Court is inclined to modify the period of imprisonment alone.

13 Accordingly, the conviction made against both the appellants is hereby confirmed and period of imprisonment alone modified from seven years to five years. These criminal appeals are partly allowed to extent stated above. Trial Court is directed to secure the custody of both the appellants to undergo remaining period of sentence.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1.The I Additional District & Sessions Judge, Salem.

2.The Judicial Magistrate No.II,
Mettur, Salem District.



3.Do Thro The Chief Judicial Magistrate,
Salem.

4.The Superintendent,
Central Prison,
Coimbatore.

5.The The Inspector of Police,
Mecheri Police Station,Salem District.

6.The Public Prosecutor, High Court of Madras.

+1cc to Mr.T.Gowthaman, Advocate sr.56441

Cr1.A.Nos.189 & 263 of 2015

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nr 16/09/2019