

Bail Slip

Santhosh, (Male), aged 29 years/2009, S/o.Pandi, was released on Bail vide Court order dated 19.08.2009, made in Crl.M.P(MD) No.1/2009 in Crl.A(MD)No.207 of 2009.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CRL.A(MD)No.207 of 2009

Santhosh : Appellant/1st Accused
Vs.

State represented by
The Inspector of Police,
Thirupparankundram Police Station,
Thirupparankundram, Madurai District.
(Crime No.338 of 2005)

: Respondent/Complainant

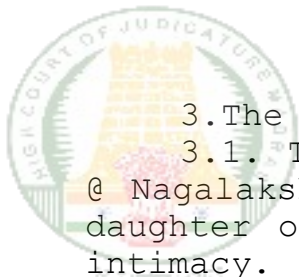
PRAYER : Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to call for the records relating to judgment passed in S.C.No.235 of 2008, dated 08.07.2009 on the file of Additional Sessions Judge, F.T.C. No.III, Madurai and to set aside the same by acquitting the appellant.

For Appellant : Mr.S.Thirupathi
For Respondent : Mrs.S.Bharathi,
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal is filed as against the conviction and sentence imposed by the trial Court, namely, the Additional District and Sessions Court (Fast Track Court No.III), Madurai in S.C.No.235 of 2008, dated 08.07.2009.

2.The appellant/accused No.1 along with two others were tried before the trial Court for the offence under Section 302 IPC r/w 34 IPC. The accused Nos.2 and 3 were acquitted by the trial Court and this appellant/first accused was found guilty for the offence under Section 304(i) IPC convicted and sentenced to undergo 7 years Rigorous Imprisonment with a fine of Rs.10,000/- in default of payment of fine amount to undergo 2 ½ years Rigorous Imprisonment. The said fine amount was also directed to be paid to P.W.11, namely, Tmt.Nagalakshmi, who is the second wife of the deceased Murugesan, as a compensation under Section 357(1) (b) Cr.P.C.



3.The case of the prosecution in brief is as follows:

3.1. The deceased Murugesan had illegal intimacy with one Nagu @ Nagalakshmi (P.W.11), who is the sister of the appellant and the daughter of the third accused. She was also pregnant due to that intimacy. A panchayat was held and as per the decision in the Panchayat, the deceased Murugesan married Nagalakshmi as second wife. After some time, Murugesan left Nagalakshmi and joined his first wife.

3.2.While so, on 03.07.2005 at about 01.00.pm., the deceased Murugesan went to the house of Nagalakshmi and quarreled with her. On hearing this news, the appellant along with his brother and father went to the house of Nagalakshmi, questioned Murugesan and also assaulted him. In the course of that incident, the deceased Murugesan sustained a stab injury on his right chest, attempted to escape, but fell down in front of P.W.7 house.

3.3. P.W.1, a relative of the deceased lodged the complaint (Ex.P.1) before the Sub-Inspector of Police, Thirupparankundram (P.W.16) and he registered the same in Crime No.338 of 2005 for the offence under Section 302 IPC, on 03.07.2008 at 01.30.P.M.

3.4.On receipt of intimation about the case registered, the Inspector of Police, Thirupparankundram (P.W.17) went to the place of occurrence around 02.15.p.m, prepared an observation mahazar (Ex.P.18) and a rough sketch (Ex.P.17) in the presence of P.W.9 and another. He also recovered the cement mortars with and without blood stains (M.Os.9 and 10 respectively) under a cover of mahazar (Ex.P.19). P.W.17 conducted the inquest at the place of occurrence from 03.15.p.m to 05.30.p.m and the inquest report is marked as Ex.P.21. He recovered the weapon Aruval (M.O.2) from P.W.2 and a wooden log (M.O.3) from P.W.4 from the place of occurrence, which the witnesses said to have snatched away from the accused. The Investigation Officer (P.W.17) arrested the accused on 03.07.2005 at about 09.00.p.m in the presence of Village Administrative Officer (P.W.12) and recorded a confession statement. Pursuant to the confession statement, a blood stained shirt and a pant (M.Os.4 and 5) were recovered from the appellant and a blood stained knife (M.O.1) was also recovered from him under a cover of mahazar (Ex.P.11 and Ex.P.12) respectively. Thereafter, he referred the dead body for post-mortem through constable (P.W.15).

3.5. Dr.Babu (P.W.14) in Government Rajaji Hospital, Madurai conducted the post-motem on 04.07.2005 at 12.05.p.m. He noted down a stab injury on the front right side of chest, pierced through his heart entering the right pleural cavity. P.W.14/Doctor gave his final opinion that the deceased appears to have died of shock and hemorrhage due to stab injury to his right chest and the corresponding internal injuries.



3.6. P.W.17/Inspector of Police has collected the post-mortem certificate (Ex.P.14) and also recorded the statement of the Doctor and the remaining witnesses, filed his final report as against this appellant and two others.

4. During the trial, 17 witnesses were examined on the side of the prosecution and 26 documents were marked as Exhibits and 12 material objects were also placed on the side of the prosecution.

5. The available evidences from the prosecution side are as follows:

i) PW1 is the brother in law of the deceased Murugesan, an eye witness to the occurrence and who lodged the complaint Ex.P.1.

ii) PWs 2 & 3 did not support the case of the prosecution.

iii) PW4 is the brother's wife of the deceased. She states about the second marriage between the deceased and Nagalakshmi and the occurrence.

iv) PW5/Alagupandi is the scribe of the complaint, Ex.P.1.

v) PW6 and PW7 are neighbours and in front of their house, the occurrence was taken place. Though they are cited as eye witnesses, they did not support the case of the prosecution.

vi) PW8 is the son of P.W.4 Pandiammal and he speaks about the occurrence.

vii) PW9 and PW10, are the witnesses for observation mahazar and seizure mahazar and have turned hostile.

Viii) PW11 is the second wife of the deceased Murugesan and she turned hostile. She speaks about a new version that there was some quarrel between them and at that time, her husband fell down on the Aruvalmanai, which caused the injury.

ix) PW12 is the Village Administrative Officer of Tirupparankundram. He speaks about the arrest and confession of the accused.

x) PW13 is Scientific Assistant in the Forensic Science Department, Madurai.

xi) PW14/Doctor conducted postmortem and issued postmortem certificate (Ex.P.14).

xii) P.W.15 is the Constable who handed over the body of the deceased along with requisition letter to the Medical Officer for postmortem and after postmortem, collected the material objects.

xiii) PW16 is the Sub Inspector of Police, who received the complaint [Ex.P.1] and registered the first information report [Ex.P.16].

xiv) PW17 is the investigation officer who conducted the preliminary investigation and arrested the accused.

6. The incriminating materials were put to the accused under Section 313 Cr.P.C, but, the accused denied the same. Though the accused stated that they are having witnesses on their side, they did not examine any witnesses.



7. In conclusion of the trial, the trial Court found this appellant guilty as stated supra, convicted and sentenced him and acquitted the other accused from the charges. Aggrieved over the conviction and sentence, the appellant preferred this Criminal Appeal.

8. Heard Mr.Thirupathi, learned counsel for the appellant and Mrs.Bharathi, learned Government Advocate (Criminal Side) for the State.

9. Mr.Thirupathi, learned counsel for the appellant has raised the following grounds in support of his contentions.

(i) Though the occurrence is said to have been taken place at about 01.00.p.m in the broad daylight, no independent witness was examined by the prosecution. Both P.W.1 and P.W.4 are close relatives of the deceased and there is a delay in reporting the incident.

(ii) The prosecution case is that the occurrence took place in front of P.W.6' s house, whereas, the P.W.6 did not support the case of the prosecution.

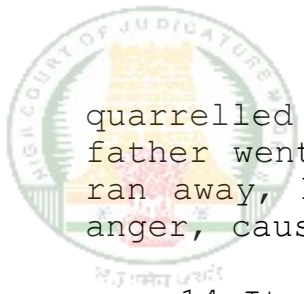
(iii) When the trial Court has extended the benefit of doubt in favour of the other two accused, it ought to have extended the benefit to this appellant also.

10. The learned counsel for the appellant also pointed out the contradictions from the evidence of prosecution witnesses. In the alternative, he made a submission that the deceased is the aggressor in this case, who already deserted the appellant's sister (P.W.11), quarreled with her on the date of occurrence and the appellant, the brother of P.W.11 said to have attacked the deceased, in a fit of anger and therefore, requested for a modification of sentence.

11. Per contra, the learned Government Advocate (Criminal Side) would submit that the prosecution has established their case beyond any doubt through P.Ws.1, 4 and 8. Their evidence is also corroborated by the evidence of the Doctor (P.W.14). The weapon/Knife (M.O.1) used by the accused for the commission of offence was recovered, pursuant to the confession of the appellant/accused. Though the charges were framed against three accused, the trial Court, with the available evidence, has rightly convicted the appellant and prays for dismissal.

12. This Court paid its anxious consideration to the rival submissions made and also perused the available records.

13. The deceased in this case, a married man, had an extra marital relationship with P.W.11, the sister of this appellant. P.W.11 conceived due to that relationship and after a panchayat, the deceased married P.W.11 as his second wife. Soon after this marriage, he left P.W.11 and joined with his first wife. On the date of occurrence the deceased came to the house of P.W.11 and also



quarrelled with her. On hearing this, the appellant, his brother and father went to the house of P.W.11 and on seeing them, the deceased ran away, but the appellant/accused brother of P.W.11, in a fit of anger, caused a stab injury on the deceased.

14. It is to be noted at this juncture that the incident took place near the house of P.W.11 and the appellant, in fact, is not the aggressor. The deceased, though married his sister (P.W.11) as second wife, has deserted her and on seeing the deceased quarreling with his sister (P.W.11), the appellant on a fit of anger has caused the injury. This chain of events is supported both by the oral as well as scientific evidence. The Doctor (P.W.14), who conducted the postmortem, has noted down a stab injury on the right side of the chest, which is the cause of death of the deceased.

15. In a case of similar in nature, in **Sangharaj Bhogappa Kamble Vs. State of Maharashtra**, reported in (2011) 2 SCC (Cri) 370, where the accused was having liquor and the deceased was accompanying him, there was a sudden quarrel among the parties and consequent to which, the accused stabbed the deceased in his chest, causing serious injury leading to death, the Honourable Supreme Court has held that the incident would fall under Exception 4 to Section 300 IPC and has imposed five years rigorous imprisonment to the accused. For better appreciation, the relevant portion from the said decision is extracted as under:

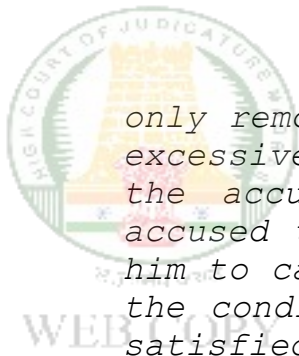
"7. In the light of what we have noticed above, the question that arises is as to the nature of the offence and whether the case of the accused would fall under Section 302 or Section 304 Part I or Part II thereof. A perusal of the facts already recapitulated above would reveal that the incident herein would fall under Exception 4 to Section 300.

8. Exception 4 reads as under:

"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 without the offender's having taken undue advantage or acted in a cruel or unusual manner".

This exception postulates four conditions for its applicability (1) that it was a sudden fight; (2) that there was no premeditation; (3) the act was done in a heat of passion; and (4) that the appellant had not taken any undue advantage or acted in an unusual or cruel manner.

9. A perusal of the facts above mentioned would indicate that the accused and the deceased were neighbours and friends and in fact they appeared to have been drinking companions as well. The incident happened because the accused felt that the deceased should not come in the way of a quarrel that he had with his father, notwithstanding the fact that the father was



only remonstrating with him as he was already drunk having taken excessive liquor. The only fault of the deceased was that when the accused slapped his father, he intervened and told the accused that he should behave which further annoyed him and led him to cause one injury to the deceased. We, therefore, see that the conditions for the applicability of Exception 4 are clearly satisfied.

10. We have also perused the medical evidence and find that there is effectively only one stab injury on the person of the deceased, the others being abrasions which could have been caused during the intervention in the quarrel between the father and son. It cannot, therefore, be said with certainty that the accused intended to cause the very injury that he inflicted.

11. In this view of the matter, we feel that the conviction of the accused for the offence under Section 302 IPC is not made out. He is, accordingly, acquitted of that offence. We, however, convict him for the offence punishable under Section 304 Part I IPC and sentence him to undergo rigorous imprisonment for five years."

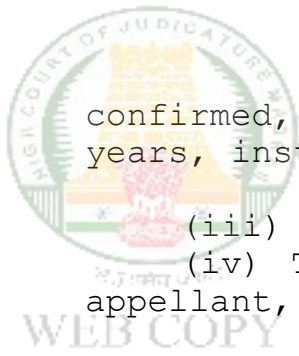
16.A perusal of the facts would indicate that the deceased, a married man, developed intimacy with the sister of the appellant (P.W.11) made her pregnant. The deceased married P.W.11 after a panchayat, but had also deserted her soon. Even after spoiling the life of P.W.11, the deceased came to her house on the date of occurrence and quarrelled with her. The appellant and his family went in rescue of P.W.11 on a sudden quarrel, the occurrence took place.

17.It is also the case of the prosecution that the occurrence was taken place in a heat of passion, on a sudden quarrel without any premeditation and therefore, this Court, in the light of the judgment of the Honourable Supreme Court in **Sangharaj's** case (supra), is of the opinion that the trial Court has rightly extended the Exception 4 to Section 300 IPC to the appellant and has convicted him under Section 304(i) IPC and therefore, this Court is not inclined to interfere with the conviction ordered by the trial Court. However, considering the totality of the circumstances and in view of the decision in **Sangharaj's** case (supra), this Court is of the opinion that the quantum of sentence of seven years impugned by the trial court deserves to be modified and accordingly, the sentence of imprisonment is modified to five years. The fine amount as well as default clause remain unaltered.

18.In the result,

(i) The Criminal appeal is partly allowed;

(ii) The conviction ordered by the Additional Sessions Judge, Madurai in S.C.No.235 of 2008, dated 08.07.2009 is



confirmed, however, the sentence of imprisonment is modified to five years, instead of seven years;

(iii) Bail bonds, if any executed, shall stand cancelled.

(iv) The trial Court is directed to take steps to secure the appellant, so as to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

das/gk

To

- 1.The Additional District & Sessions Judge,
Fast Track Court No.III, Madurai.
- 2.The Principal Sessions Judge, Madurai.
- 3.The Judicial Magistrate No.VI, Madurai.
- 4.The Chief Judicial Magistrate, Madurai.
- 5.The Superintendent, Central Prison, Madurai.
- 6.The Inspector of Police,
Thirupparankundram Police Station,
Thirupparankundram, Madurai District.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2)

CRL.A(MD)No.207 of 2009
14.11.2019

(CO)
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