



Bail Slip

The Appellant/Accused viz Rajiv Gandhi S/o.Ilaiyaperumal, was released on bail granted as per ordered dated 02.08.2018 made in CrI MP(MD)No.291 of 2018 in Cl.A.(MD)No.26 OF 2018

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:13.11.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH
Cl.A.(MD)No.26 OF 2018**

Rajiv Gandhi : Appellant/Accused

.Vs.

The State, by
The Inspector of Police,
Gandhi Market Police Station,
Tiruchirappalli
(Crime No.305 of 2012)

: Respondent/Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment made in S.C.No.26 of 2013, dated 11.6.2014, on the file of the Principal District and Sessions Court, Tiruchirappalli.

For Appellant : Mr.A.Arunprasad

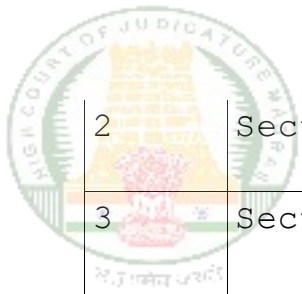
For Respondent : Mr.M.Chandrasekar
Additional Public Prosecutor

JUDGMENT

S.VAIDYANATHAN, J.
AND
N.ANAND VENKATESH, J.

The sole accused aggrieved by the judgment of the Principal District and Sessions Judge, Trichy Division made in S.C.No.26 of 2013, dated 11.06.2014, has filed this Criminal Appeal before this Court. The appellant was convicted and sentenced as follows:

S.No.	Offence for which convicted	Sentence of Imprisonment	Fine Amount
1	Section 294(b) of IPC	Three months simple imprisonment	-Nil-

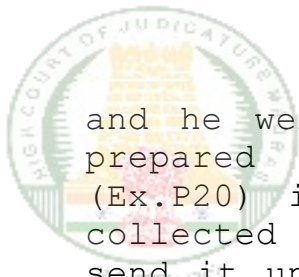


2	Section 341 of IPC	One month simple imprisonment	-Nil-
3	Section 302 IPC	Life Imprisonment	To pay a fine amount of Rs.1000/- and in default to undergo 15 days simple imprisonment

2.The case of the prosecution is that the appellant herein had a dispute with one Rajamanickam(P.W.7), when he threw a cigarette bud over the petrol tank of the Bike belonging to the said Rajamanickam. This had taken place on 21.04.2012 at about 6.00 p.m. This was informed by Rajamanickam to the deceased. On 22.04.2012 at about 11.00 a.m. When the appellant was standing near the Gandhi Market, the deceased questioned the appellant as to why he had thrown the cigarette bud over the petrol tank of the bike belonging to Rajamanickam and there was a wordy quarrel between them. The deceased is said to have uttered the words to the effect that no human being can talk with the appellant and enraged by those words, the appellant had taken the bill-hook(M01) which he was keeping in his hip portion and attacked the deceased and his first attack on the deceased was in his fore-hand, leading to a cut injury. Thereafter, the appellant again attacked the deceased and caused cut injury in the hip portion. Immediately, the deceased was taken to the hospital by P.W.1 to P.W.3 and he was treated by the Doctor (P.W.11) and he was treated as inpatient at Government Hospital,Trichy. The injuries sustained by the deceased was recorded in the Accident Register (Ex.P7).When the deceased was taking treatment, he was also attended by one more Doctor(P.W.19) and when he was taking such treatment, the deceased died at about 3.15 p.m., on the same day.

3.The Sub-Inspector of Police (P.W.17) received information on 22.4.2012 at about 11.40 a.m from Government Hospital about the incident. He went to the hospital and recorded the statement of the deceased Sudhakar at about 12.00 noon. It was reduced into a complaint(Ex.P15) and he also recovered the clothes that were worn by the deceased in the presence of the witnesses, under Seizure Mahazar(Exp4). Thereafter, he came back to the Police Station and registered an FIR(Ex.P16) in Crime No.305, for the offence under Sections 341,294(b) and 302 IPC. The Express FIR was sent to the Judicial Magistrate No.V, Trichy and the case was placed for investigation before the Inspector of Police.

4.The Inspector of Police (P.W.20) took up the investigation



and he went to the scene of crime at about 1.00 p.m. and he prepared the Observation Mahazar(Ex.P2) and the Rough Sketch (Ex.P20) in the presence of the witness(P.W.8). He thereafter collected the material objects from the scene of crime and had send it under Form No.95 to the concerned Court. He also started recording the statements of the witnesses under Section 161(3) of Cr.P.C. The Investigation Officer arrested the appellant on 22.04.2012 at about 3.00 p.m. and based on his voluntary confession, he seized the bill-hook (MO1) under Seizure Mahazar (Ex.P6).Thereafter, he had produced the appellant before the concerned Court and he was remanded to judicial custody.

5.The Investigation Officer received the news about the death of the deceased at about 5.00 p.m from Government Hospital Trichy and thereafter, he prepared the alteration report(Ex.P23) and sent the same to the Court. Thereafter, he proceeded to the hospital on 23.4.2012 and he conducted an inquest over the body of the deceased in the presence of the Panchayatdars and prepared the Inquest Report(Ex.P24).

6.The Investigation Officer thereafter gave a requisition for conducting the post-mortem and he also recovered the clothes from the body of the deceased under Seizure Mahazar and had sent it to the Court under Form No.95(Ex.P14 and Ex.P25). He proceeded to record the statements of the other witnesses under Section 161 (3) of Cr.P.C. The Investigating Officer thereafter collected the Post-mortem Certificate(Ex.P18), Biological Report(Ex.P18), Serological Report (Ex.P9 and 12) and the Chemical Report(Ex.P10) and also the Viscera Report (Ex.P19) and he examined all the concerned witnesses.

7.The Investigating Officer, ultimately completed the investigation and he filed a final report before the Judicial Magistrate No.V, Tiruchirappalli for an offence under Sections 294(b), 341 and 302 of IPC.

8.The case was committed to the Principal District and Sessions Judge, Trichy and after providing necessary documents to the appellant under Section 207 of Cr.P.C, charges were framed against the appellant for the offence under Sections 294(b), 341 and 302 of IPC. The prosecution examined P.W.1 to P.W.20 and marked Ex.P1 to Ex.P25 and exhibited MO1 to MO7.

9.The trial Court, had put the incriminating materials collected during trial to the appellant when he was questioned under Section 313(1)(b) of Cr.P.C and he denied the same as false.

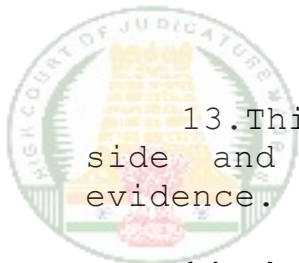
10.The trial Court after considering the facts and circumstances of the case and after analyzing both the oral and



documentary evidence, came to a categorical conclusion that the prosecution has proved the case beyond reasonable doubts and proceeded to convict and sentence the appellant in the manner stated above.

11.The learned counsel for the appellant submitted that the prosecution had examined certain witnesses as eye-witnesses and they could not have seen the incident. The learned counsel further submitted that the so-called eyewitnesses were all chance witnesses and there was no explanation as to how they were present in the scene of crime during the alleged incident. The learned counsel further submitted that the motive that has been attempted to be projected by the prosecution is very frivolous and it could not have gone to the level of committing murder and the motive itself looks very artificial. The learned counsel further submitted that even if the case of the prosecution is taken to have been proved, the entire incident had taken place in a spur of moment and the appellant had attacked the deceased due to grave and sudden provocation and therefore, the present case will not fall within the requirements of Section 300 of IPC and the facts of the present case will squarely fall under Exception 1 to Section 300 of IPC and therefore, the appellant is liable to be punished under Section 304 of IPC.

12.Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent/State submitted that the prosecution had examined five eye-witnesses in this case namely, P.W.1, P.W.2, P.W.3, P.W.4 and P.W.6 and all of them have cogently explained the manner in which the incident had taken place. The learned counsel further submitted that the actual dispute that had happened during the previous day has also been explained by P.W.7. There is absolutely nothing to discredit the evidence of those witnesses. The learned counsel further submitted that the deceased was immediately admitted in the hospital and he was taken care and the nature of injuries sustained by the deceased has also been clearly reflected in the Accident Register which was marked as Ex.P7.The learned Additional Public Prosecutor further submitted that there was absolutely no delay in the registration of the First Information Report and also the FIR reaching the Court and the entire investigation has been carried out as per Law. The learned counsel submitted that the post-mortem Doctor, who was examined as P.W.18 and the post-mortem certificate which was marked as Ex.P18, clearly speaks about the cause of the death of the deceased. Therefore, the learned Additional Public Prosecutor submitted that there are absolutely no ground to interfere with the judgment of the trial Court and prayed for dismissal of the Criminal Appeal.



13.This Court carefully heard the submissions made on either side and also carefully assessed the oral and documentary evidence.

14.The case of the prosecution hinges upon the evidence of eye-witnesses. In this case, the prosecution has examined P.W.1, P.W.2,P.W.3, P.W.4 and P.W.6 as eye-witnesses and a careful reading of their evidence clearly establish the fact that they had indeed seen the incident and there is absolutely nothing to discredit their evidence.

15.A reading of the evidence of P.W.7 shows that there was a wordy quarrel between P.W.7 and the appellant, since the appellant had thrown the cigarette bud in the petrol tank of the bike belonging to P.W.7. After this incident took place, on the next day, the deceased had questioned the appellant about this incident and unfortunately, it resulted in the death of the deceased. Therefore, the reason behind the incident was also clearly established by the prosecution.

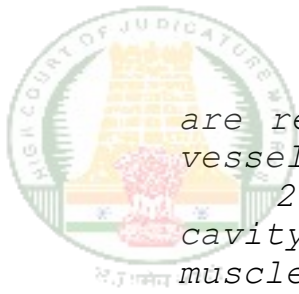
16.The arrest, confession and recovery has been clearly spoken by the witnesses(P.W.10). The recovery of the bill-hook (MO1) has also been clearly established and the bill-hook was also sent to the forensic laboratory and Ex.P9 which is the Serological Report clearly shows the presence of human blood in the bill-hook. It was ascertained as 'A' group which coincided with the blood group of the deceased.

17.It will be relevant to take note of the evidence of the Doctors (P.W.11 and P.W.19) who spoke about the admission of the deceased in the Government Hospital, Trichy and the wound that was sustained by the deceased which has been noted in the Accident Register(Ex.P7).The Complaint (Ex.P15) was the statement that was recorded by P.W.17 from the deceased, when the deceased was taking treatment in the hospital. This complaint itself can be treated as a dying declaration under Section 32 of the Indian Evidence Act, since the complaint clearly speaks about the events leading to the cause of the death of the deceased.

18.The evidence of post-mortem Doctor(P.W.18) and the Post-mortem Certificate (Ex.P15) clearly gives the reason for the death of the deceased. In the Post-mortem Report, it has been specifically opined that the deceased had died due to shock and hemorrhage due to multiple wounds. The injuries as recorded in the Post-mortem Certificate is extracted hereunder:

' 'Wounds :

1.An oblique incised would 12 cm x 3cm x exposing the underlying structures on the front of right elbow and upper third of front of right forearm. O/E Edges



are regular. Both ends are sharp. The muscles, blood vessels and nerves are cut.

2. An oblique incised stab wound, 22 cm x 11 cm x cavity deep, on the back of right side of abdomen. The muscles, blood vessels and nerves are cut. Bruising of omentum and small intestine-Dark red. Cut fracture of 12th rib right side present. Fluid blood present in the peritoneal cavity.

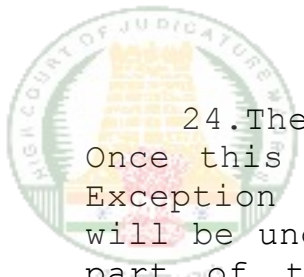
3. Intravenous cut down wound, on both leg near the ankle -surgical treatment. ''

19. A combined reading of all the materials that are available on record clearly establishes the fact that it was the appellant who had attacked the deceased, resulting in his death. It has been sufficiently established by the prosecution and the Court below was perfectly right in coming to a conclusion that the prosecution has established the case beyond reasonable doubts against the appellant.

20. The last issue that requires consideration is as to whether the facts of the present case will fall within the four limbs of Section 300 of IPC or whether any of the exceptions under Section 300 of IPC is attracted.

21. It is clear from the evidence of P.W.1 to P.W.4 and P.W.6 that there was a wordy quarrel between the deceased and the appellant immediately prior to the incident. The deceased is said to have uttered words to the effect that no human being can talk with the appellant. These words had provoked the appellant to attack the deceased with a bill-hook, which he already had with him. It is seen that all these persons were working in the Gandhi Market and were dealing with loading and unloading of bananas. Therefore, it is natural that these persons keep a bill-hook in the course of their daily work. Therefore, it cannot be said that the bill-hook was brought by the appellant only for this purpose. There was no pre-meditation on the part of the appellant and the entire incident had taken place in a spur of moment. In fact, P.W.2 in his evidence has stated that the deceased and the appellant are known to each other and they were friends. Therefore, there was absolutely no prior motive for the appellant to commit the murder of the deceased.

23. In the facts and circumstances of this case, it is seen that the present case will squarely fall within Exception 1 to Section 300 of IPC. The appellant had lost his power of self control due to grave and sudden provocation and he had caused the injuries to the deceased without any pre-mediation which unfortunately ended in the death of the deceased. Therefore, this case will fall under culpable homicide not amounting to murder.



24.The next issue that has to be decided is the punishment. Once this Court has found that the present case will fall under Exception (1) of Section 300 of IPC, the consequent punishment will be under Section 304 of IPC. The weapon that was used and the part of the body upon which the attack had taken place will establish the fact that the appellant had the intention of causing such bodily injury as is likely to cause death. Therefore the appellant will have to be punished under Part-I of 304 IPC. Therefore, this Court is of the considered view that by taking into consideration the facts of the entire case, it will be appropriate if the appellant is punished for the substantive offence to undergo seven years rigorous imprisonment and to that extent, the conviction and sentence shall stand modified.

25.In the result, the judgment of the Principal District and Sessions Court, Tiruchirappalli made in S.C.No.26 of 2013, dated 11.6.2014 is modified and the conviction and sentence passed by the court below for the offence under section 294(b) and 341 of IPC is confirmed. However, the conviction and sentence for the offence under Section 302 of IPC is modified and instead, the appellant is convicted for culpable homicide not amounting to murder by bringing this case under Exception 1 of Section 300 of IPC and he is punished to undergo rigorous imprisonment for a period of seven years and he shall pay a fine of Rs.1,000/- and in default to pay the said fine amount, further to undergo one month simple imprisonment. The substantive sentence shall run concurrently and the period of imprisonment already undergone by the appellant is directed to be set off under Section 428 of Cr.P.C.

26.It is brought to our notice that the appellant is now on bail. The bail bond shall stand cancelled and the appellant is immediately directed to surrender before the Judicial Magistrate No.V, Tiruchirappalli and the appellant shall be immediately sent to jail in order to undergo the remaining period of sentence. If the appellant does not surrender before the concerned Court immediately, the respondent/Police shall immediately secure the appellant and produce him before the Judicial Magistrate No.V, Tiruchirappalli, who shall thereafter confine the appellant to jail, to undergo the remaining period of sentence.

27.This Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)



To
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- 1.The Principal District and Sessions Judge,
Tiruchirappalli,
Tiruchirappalli District.
- 2.The Judicial Magistrate, Tiruchirappalli
- 3.The Judicial Magistrate No.V, Tiruchirappalli
- 4.Do Thro'
The Chief Judicial Magistrate
Tiruchirappalli
- 5.The Superintendent, Central Prison
Trichy
- 6.The Inspector of Police,
Gandhi Market Police Station,
Tiruchirappalli
- 7.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

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JUDGMENT MADE IN
CRL.A.(MD)No.26 of 2018
13.11.2019

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