



Bail Slip

The Appellant/Accused viz C.John Britto, S/o. Cabriel, was released on bail grated as per order dated 17.05.2018 made in Crl.MP(MD)No.3638/2018 in Crl.A(MD)No.76/2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Date of Reservation</i>	<i>29.04.2019</i>
Date of Judgment	26.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.A. (MD)No.76 of 2018

and

Crl.MP(MD)No.1396 of 2019

C.John Britto

: Appellant/Sole Accused

Vs.

State represented by
The Inspector of Police,
Kollencode Police Station,
Kanyakumari District.
(Crime No.323/2012)

: Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for records and set aside against the judgment made in S.C.No.175 of 2013, dated 11.01.2018 on the file of the Fast Track Mahila Court, Kanyakumari at Nagercoil.

For Appellant : Mr.C.Muthu Saravanan
For Respondent : Mr.A.Robinson,
Government Advocate (Crl.side)

J U D G M E N T

This Criminal Appeal is directed against the judgment passed in S.C.No.175 of 2013, dated 11.01.2018 by the Fast Track Mahila Court, Kanyakumari @ Nagercoil.

2.The case of the prosecution is that there was enmity between the family members of both parties with regard to pathway and due to it, on 23.12.2012, the appellant said to have shouted PW1 with filthy language and trespassed into the house of PW1 and pushed PW1 down and pulled the child from her hands and both of them had fallen on the Floor and the child sustained a fatal head injury and subsequently, the infant died in the hospital. In this regard, the respondent police has registered a case in Crime No.323 of 2012 for



the offences under Sections 294(b), 452, 307 and 302 IPC examining the witnesses.

3. In the trial court, 9 witnesses were examined and 7 documents were marked. When the accused was questioned about the incriminating circumstances, he denied the same. On the side of the accused, 3 witnesses were examined and no document was marked. The trial court convicted the appellant/accused for the offences under Sections 452 and 304(2) IPC and sentenced him to undergo rigorous imprisonment for 5 year and to pay a fine of Rs10,000/-, in default to undergo further 6 months of rigorous imprisonment and also convicted the appellant under Section 304(2) IPC, sentencing him to undergo rigorous imprisonment for five years and to pay a fine of Rs.10,000/-, in default to undergo further rigorous imprisonment for 6 months and directed the sentences to run concurrently. Aggrieved by the judgment passed by the trial court, the appellant/accused is before this court.

4. Heard both sides and perused the materials available on record.

5. The first contention raised on the side of the appellant/accused is that the enmity between the accused and the family of the de-facto complainant is admitted by the witnesses and hence, there is every possibility of roping the appellant/accused in order to suit the case of the prosecution and the motive is a double edged weapon and can be used by either party according to their convenience and the enmity between the appellant and PW1's family is much older one and there is no reason or immediate motive for the appellant to trespass into the house of PW1 on the date of occurrence and there is no prior incident on that day between the families and the appellant had no intention to commit any crime against the child and the trial court ought to have disbelieved the evidence of PW1, since if she held the child as spoken by her in the deposition, it is highly impossible for the child to fell on the floor separately and if the incident had occurred as spoken, then the PW1 and the child would have fallen simultaneously and the child would have fallen on PW1 and not on the floor and the trial court failed to appreciate the fact that to pull the legs of 50 days old child, when the child was held tightly in the shoulder of PW1 and that too when it was covered by a turkey towel and there are contradictions in the evidence of PW1 to PW6 and prays that the accused is entitled to acquittal.

6. PW1 is the grand-mother of the deceased child and she gave Ex.P1 complaint to the police. PW1 in her complaint and evidence stated that there was enmity between the family members of both parties with regard to pathway and due to it, on 23.12.2012, the appellant said to have shouted PW1 with filthy language and trespassed into the house of PW1 and pushed PW1 down and pulled the



the child sustained a fatal head injury and subsequently, the infant died in the hospital and she lodged a complaint before the police.

7.PW2 to PW6 are cited as eye witnesses. PW2 to PW4 are the daughters of PW1. PW5 is the husband of PW1. PW2 to PW4 deposed that on 23.12.2012 at 6.30 pm, the accused fought with their mother and scolded in filthy language and the accused came from behind the house into the hall and at that time, their mother was holding the child in her shoulder and the accused pushed their mother and pulled the child and their Uncle Prabhakaran and father Nagendran were standing outside and on hearing the noise, both came and the accused ran away and thereafter, their mother took the infant to Reeta Hospital and the Doctor, after examining the child told that the child is dead and thereafter, the infant was brought to their house and their mother went to the police station to give a complaint.

8.PW5 deposed that on 23.02.2012, he and his brother-in-law Prabakaran were standing near the house and talking and they heard a filthy word and at that time, one person was standing in front of his wife, who was standing in front of the house and his wife was holding an infant in her shoulder and the accused pulled the child and pushed his wife and thereafter, he and his brother-in-law Prabakaran ran behind the accused, but the accused run away and before they could return home, the child and his wife were taken to Reeta Hospital, but he did not go and as soon as, he came to know that the child was not alive, his wife went to the police station and then he came and saw the dead body of the child.

9.PW6 deposed that on 23.12.2012 at about 6.30 pm, while he and his brother-in-law were standing to talking to each other near his brother in law's house, the accused came shouting and trespassed into his brother-in-law's house and at that time, his elder sister was holding the child in her shoulder's inside the hall of the house and when he and his brother-in-law went behind the accused, the accused pulled the child and pushed her elder sister and ran out of the house and they chased the accused, but he escaped and after that, his sister and the child were taken to Reeta Hospital and the Doctor said that the child is dead and thereafter, the child was brought to home and his sister went to the police station and gave a complaint. Hence, the evidence of PW1 is corroborated with the evidence of PW2 to PW6.

10.The Doctor, who conducted post mortem on the body of the deceased child was examined as PW14. PW14 found the following injuries on the body of the deceased child:-

"A black mole seen over the right eyebrow region. Rigor mortis present all over the body. Body was kept in cold storage. Moderately built and nourished body of a female child with finger and toe



nails blue in colour. Nil external injuries. Nil genital injuries."

11.PW14 categorically stated that the child died due to the head injuries. PW1 to PW4 have categorically stated that due to previous motive, the accused came and trespassed into their house and pushed their mother and pulled the leg of the infant and the child was fell down and sustained head injury. Hence, the evidence of PW1 to PW4 is corroborated with the evidence of PW14.

12.It is seen from the evidence of the prosecution witnesses that the accused in a fit of anger only took drastic steps of pushing PW1 and pulling the child. PW1 has not stated that while she was pushed down on the floor by the accused, the accused uttered that she should die. The other eye witnesses also have not stated anything in this regard and they also did not depose anything in their evidence with regard to this aspect. If the accused had real intention to kill PW1, he would have come with some weapon. So there is no preparation or pre-planning on the part of the accused to kill PW1 or the child. But as a mature person, the accused pretty well knew that pushing PW1 and pulling the leg of 50 days old infant and throwing the infant down would certainly and necessarily result in serious injury and that every likelihood of his act will endanger the life of the infant. Hence, this court is of the considered view that the act of the accused falls under the definition under Section 300 IPC (**Culpable homicide not amounting to murder**) .

13.At this juncture, this court would like to extract the definition as detailed in Section 300 IPC, which would run thus:-

"Murder-Except in the cases hereinafter excepted, culpable homicide is murder, if the act, by which the death is caused is done with the intention of causing death, or -

Secondly- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

Thirdly-If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

Fourthly, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such



act without any excuse for incurring the risk of causing death or such injury as aforesaid."

14. So the forth ingredient mentioned in Section 300 IPC, very much fits to the act of the accused attributed by the prosecution witnesses, more particularly PW1 to PW4. Hence, this court is of the considered opinion that the act of the accused falls under exception 4 of section 300 IPC, which would run thus:-

"If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

The explanation says, it is immaterial in such case which party offers a provocation or commits the first assault. Hence, this court is of the considered opinion that the act of the accused which has been done without pre-mediation, but in a heat of passion in a sudden fit of. So, it is immaterial whether the opposite party offers a provocation or not? During the cross examination of PW1, it is elicited that with regard to the land dispute, PW1 scolded the parents and sisters of the accused and the accused challenged it with PW1. The particular admission in cross examination of PW1 that the accused entered the house in a fit of anger and heat of passion and questioned PW1 and scolded her and pushed her and pulled the infant, which she was holding, in the considered opinion of this court, would fall under Clause 4 of Section 300 IPC.

15. For all the reasons stated above, this court is of the considered view that the trial court after properly analysing the entire materials available on record, had given a correct finding, which does not require any interference by this court.

16. In the result, this Criminal Appeal is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Fast Track Mahila Court,
Kanyakumari @ Nagercoil.

<https://hcservices.ecourts.gov.in/hcservices/>



2. The Superintendent of Central Prison,
Palayamkottai
3. The Inspector of Police,
Kollencode Police Station,
Kanyakumari District
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer, (2 Copies)
Criminal Section(Record),
Madurai Bench of Madras High Court, Madurai

+1 CC to Mr.C.MUTHU SARAIVANAN, Advocate (SR-78134[F] dated
29/07/2019)

Judgment made in
Crl.A.(MD)No.76 of 2018
26.07.2019

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MK (08.11.2019) 6P 8C