



BAIL SLIP

The Appellant/Accused Veerabathiran @ Murugan, S/o. Chellan was released on bail Vide order dated 22.06.2018, made in CRL MP (MD).2474 of 2018 in CRL A(MD).156 of 2018.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl. A. (MD)No.156 of 2018

Veerabathiran @ Murugan

... Appellant/Sole Accused

Vs.

State through
The Inspector of Police,
Kulasekharam Police Station,
Kanniyakumari District.
(In Crime No.37 of 2008)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, praying to set aside the conviction and sentence imposed by Judgment dated 10.06.2015 passed in S.C.No.92 of 2009 on the file of the Sessions Court, Kanniyakumar District at Nagercoil.

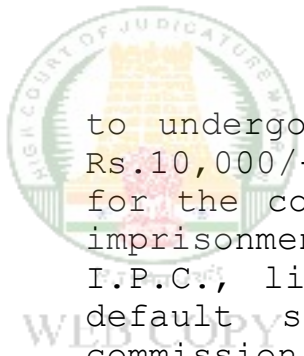
For Petitioner : Mr.R.Alagumani

For Respondent : Mr.R.Anandaraj
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by **T.RAJA, J.**)

The appellant is the sole accused in S.C.No.92 of 2009 on the file of the District and Sessions Judge, Kanyakumari District at Nagercoil and he stood charged, tried and convicted for the commission of offences under Sections 307, 324, 302, 323 and 506 of the Indian Penal Code. vide judgment dated 10.06.2015, he was sentenced



to undergo 10 years rigorous imprisonment and to pay a fine of Rs.10,000/- with default sentence of 3 years rigorous imprisonment for the commission of offence under 307 I.P.C., 3 years rigorous imprisonment for the commission of offence under Section 324 I.P.C., life imprisonment and to pay a fine of Rs.10,000/- with default sentence of 3 years rigorous imprisonment for the commission of offence under Section 302 I.P.C., one year rigorous imprisonment for the commission of offence under Section 323 I.P.C. and 7 years rigorous imprisonment for the commission of offence under Section 506(ii) I.P.C. and the sentences were ordered to run concurrently. The appellant/sole accused, aggrieved by the impugned judgment of conviction and sentence passed by the Trial Court, came forward with this Criminal Appeal.

2. Facts leading to the filing of this Criminal Appeal, relevant for the purpose of disposal of this case, briefly narrated, are as follows:

2.1. It is the case of the prosecution that the appellant/accused - Veerabathiran @ Murugan, P.W.1 - Bency and his wife P.W.10 - Rani were neighbours and they were frequently involving in wordy quarrel for the reason that the appellant allegedly called P.W.1 for cutting trees inside the forest, but P.W.1 refused the same and thereafter on 17.02.2008 at about 6.00 p.m. there was a quarrel between the wife of the appellant and wife of P.W.1. In continuation of the same, at about 9.30 p.m. on the same day the accused came to the place of occurrence with M.O.1- Vettukathi and attacked P.W.10 on the right side of her neck and when she blocked the attack with her left hand, she suffered injury on her left hand. While so, when P.W.1 attempted to prevent the appellant/accused, he attacked P.W.1 on his left shoulder and when P.W.8 - Paulthangam, mother-in-law of P.W.1 and the deceased Rajamani, father-in-law of P.W.1 came to the help of the defacto complainant, the accused attacked the deceased on the right chest, right forehead, nose, lips, right thigh, left side of the neck, left big toe, left ribs, left ear and caused injuries and hit P.W.8 with his right elbow on her chest. Immediately thereafter, P.Ws.1, 8, 10 and the deceased were taken to Asaripallam Government Medical College Hospital in a car by P.W.9 - Santha and P.W.2 - Dr.Abdul Alim admitted them in the hospital.

2.2. On 17.02.2008 at about 9.30 p.m. P.W.2 examined the deceased and noted the following injuries:

"1. Lacerated wound right side face extending from forehead to upper lip. Partial avulsion of right side nose. Bleeding present. Bone depth.

2. Lacerated wound extending from back of the scalp at the level of left ear to left side neck at the level of collar bone inverted 'V' shape. Bleeding present 3 cm.

3. Lacerated wound 5 x 1 cm on the pinna of left ear.

4. Lacerated wound 5 x 2 x 0.5 cm on the right side



chest. Bleeding present.

5.Incised wound 5 x 4 x 1cm on the back below left scapular Bleeding present.

6.Incised wound 10 x 7cm x bone depth on the upper portion of the right thigh. Just below the right hip Bleeding present.

7.Lacerated wound 1 x 1 x 0.5 cm on the left thumb. (Palmer aspect) Bleeding present."

The copy of the accident register recorded by P.W.2 for the deceased is marked as Ex.P.2. At about 10.55 p.m. P.W.2 examined P.W.1 and noted the following injury:

"1.A incised wound 12 x 5 cm x bone depth. Bleeding present on the Left Shoulder Joint."

The copy of the accident register recorded by P.W.2 for P.W.1 is marked as Ex.P.3. P.W.1 was discharged from the hospital on 23.02.2008. At about 11.10 p.m., P.W.2 examined P.W.10 and noted the following injuries:

"1.Incised wound 10 x 4 cm x bone depth. Bleeding present on the back of the neck.

2.Lacerated wound 6cm x 1cm x 0.5cm in size on the dorsum of left hand extending from the base of the left index finger to left ring finger."

The copy of the accident register recorded by P.W.2 for P.W.10 is marked as Ex.P.4. P.W.10 was discharged from the hospital on 02.03.2008. At about 11.20 p.m., P.W.2 examined P.W.8 and noted the following injury:

"1.Reddish Contusion 3 x 3cm on the Middle of the Chest tenderness present Difficulty in breathing."

The copy of the accident register recorded by P.W.2 for P.W.8 is marked as Ex.P.5. P.W.8 was discharged from the hospital on 24.02.2008. The intimation sent to the Police about the admission of the above said persons by P.W.2 is marked as Ex.P.6.

2.3.On 18.02.2008 at about 12.00 noon, P.W.6 - Anitha, Sub-Inspector of Police. Kulasekharam Police Station, received intimation from Asaripallam Government Medical College Hospital and she went to the Hospital at 13.45 hours and recorded the statement of P.W.1 - Ex.P.1 and returned to the police station at at 16.00 hours and registered a case in Crime No.37 of 2008 under Sections 323, 324, 307 and 506(ii) I.P.C. The printed F.I.R. is marked as Ex.P.12.

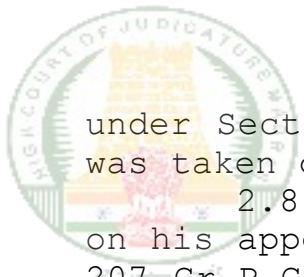
2.4.P.W.6 despatched the original F.I.R. and the original complaint to the Court of jurisdictional Magistrate and copy of the same to P.W.15 - S.M.Jayakumar, Inspector of Police, in charge of Kulasekharam Police Station and higher officials. P.W.15 at about 17.00 on 18.08.2008 received the F.I.R. and he proceeded to the scene of crime in the presence of P.W.11 - Arulmoni and one Nelson and has prepared Observation Mahazar and Rough Sketch marked as Exs.18 and 24 respectively. At about 17.30 hours, he recovered M.O.6 - blood stained earth and M.O.7 -

condemned in the presence of the same witnesses. He examined

admissibl
recovery

2.6. P.W.3 - Dr.Selvapriya was the Tutor in Forensic Medicine attached to Kanyakumari Medical College, Nagercoil and she conducted postmortem on 02.03.2008 at 11.20 a.m. The post mortem report is marked as Ex.P.7. She opined that the deceased would appear to have died of multiple injuries and its complications. The Final Opinion is marked as Ex.P.9. The Chemical Analysis Report is marked as Ex.P.8.

<https://hdservicesaccount.gov.in/services/>



under Sections 323, 324, 307, 302 and 506(ii) I.P.C. and the same was taken on file in P.R.C. No.29 of 2008.

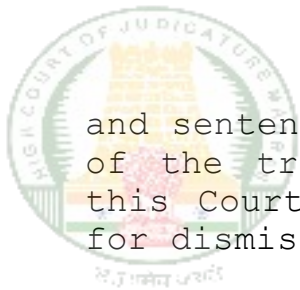
2.8. The Committal Court issued summons to the accused and on his appearance, furnished him copies of documents under Section 207 Cr.P.C. and having found that the case is exclusively triable by the Sessions Court, had committed the same to the Principal District Court. Kanyakumari, which took it on file in S.C.No.92 of 2009. The appellant/accused was issued with summons and on his appearance, charges under Sections 323, 324 (2 counts), 506(ii) and 302 IPC have been framed.

2.9. The prosecution, in order to sustain its case, examined PWs.1 to 16, marked Exs.P1 to P27 and also marked M.Os.1 to 7. The appellant/accused was questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances made out against him and he denied it as false. The appellant/accused did not examine any witness or marked any document.

2.10. The Trial Court, on a consideration of oral and documentary evidence and other materials, had found the appellant/accused guilty of the offences and sentenced him as stated above, vide impugned judgment dated 10.06.2015 and challenging the same, the present Criminal Appeal is filed.

3. Mr.R.Alagumani, learned counsel appearing for the appellant/accused would submit that the deceased Rajamani, who was aged 65 years at the time of occurrence, admitted in the hospital on 18.02.2008 at 12.05 p.m. and he died on 01.03.2008 at 5.45 p.m. 12 days after his admission in the hospital. The deceased would not have died of the injury Nos.1 to 7 found in the postmortem certificate but died only due to the injury No.8, which was caused during surgery. The doctor who gave treatment to the injured was not examined and the dying declaration of the deceased was not recorded. The prosecution has failed to prove the motive for the occurrence. He also submitted that all the witnesses are relative witnesses and interested witnesses. In sum and substance, it is the submission of the learned counsel appearing for the appellant/accused that in the light of the gaps and holes and very many infirmities, the case projected by the prosecution against the appellant/accused is not proved beyond any reasonable doubt and therefore, prays for setting aside the impugned judgment of conviction and sentence.

4. On the other hand, Mr.R.Anandaraj, the learned Additional Public Prosecutor appearing for the State submits that the accused had indiscriminately attacked P.W.1, P.W.8, P.W.10 and the deceased with Vettukathi. P.Ws.1, 8 and 10, who are injured witnesses deposed clearly about the occurrence. Their evidence was supported by the other oral and medical evidence. Therefore, the trial Court on proper appreciation of oral and documentary evidence reached the conclusion to record the conviction



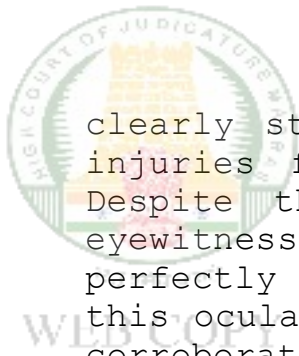
and sentence and in the absence of any infirmities in the judgment of the trial Court, in exercise of its appellate jurisdiction, this Court cannot interfere with the impugned judgment and prays for dismissal of this appeal.

5.This Court paid its anxious consideration to the rival submissions made and also perused the oral and documentary evidences and other materials placed on record including the impugned Judgment as well as the original records.

6.The question arises for consideration is whether the prosecution has proved the guilty of the accused beyond any reasonable doubt in the light of the evidence let in?

7.It is not in controversy that deceased Rajamani and P.Ws.1, 8 and 10 sustained injuries in an incident that took place at about 9.30 p.m. on 17.02.2018. They were immediately taken to Asaripallam Government Medical College Hospital, Nagercoil. They were examined by P.W.2 - Dr. Abdul Alim between 10.40 p.m. to 11.20 p.m. and issued wound certificates. The prosecution was able to establish the fact that the deceased died of multiple injuries and its complications by examining P.W.3, postmortem doctor before the Court and through the contents of Ex.P.7, postmortem certificate. Though the learned counsel for the Appellant contends that when P.W.2 has not found any injury on the stomach, there was no necessity for conducting surgical incision on the upper abdomen, which is shown as injury No.8 in the postmortem, the evidence of P.W.3 shows that Peritoneum found adherent to the bowels muddy and pus material found sticking to the intestine and the injury found in the small intestine was sutured and the same could have been caused 10 to 15 days prior to postmortem and hence, the injury in the small intestine through the abdomen could have been caused only at the time of the occurrence. Hence, there is no impediment for the trial Court in recording a finding that the injuries found on the deceased Rajamani were homicidal injuries.

8.In order to substantiate that it was the accused/appellant who caused the injuries on the deceased and P.Ws.1, 8 and 10, the prosecution rested its case on the direct evidence of P.W.s.1, 8 and 10, who are injured eye-witnesses and P.W.9, who is also an eyewitness. They deposed in union that at about 9.30 p.m. on 17.02.2008, the accused came with a vettukathi and attacked P.W.10 with an intention to kill her by aiming her neck and caused injury on her left hand. When, P.W.1 intervened he was attacked on his left shoulder. When P.W.8, the mother of P.W.10 and the deceased Rajamani, father of P.W.10 came to her rescue, the accused attacked the deceased indiscriminately with vettukathi and attacked P.W.8 with hands. P.Ws.1, 8, 9 and 10 have



clearly stated that the accused was responsible for causing the injuries found on the deceased and also on P.Ws.1, 8 and 10. Despite their cross-examination in full, the evidence of the eyewitnesses remained unshaken. Hence, the trial Judge is perfectly correct in accepting the evidence of eyewitnesses and this ocular testimonies projected through eyewitnesses stood fully corroborated by the medical evidence. According to the postmortem doctor, all those injuries actually found in the postmortem certificate could have been caused by the weapon of crime.

9.Though the learned counsel appearing for the appellant submits that all the witnesses are relative witnesses and interested witnesses, their evidence was not discarded on the side of the accused during cross-examination. In this regard, it is relevant to extract the judgement of the Hon'ble Apex Court in **Sadyappan v. State [(2019) 9 SCC 257:-**

"16. Going by the corroborative statements of those witnesses, it is discernible that though they are related to each other and to the deceased as well, their evidence cannot be discarded by simply labelling them as "interested" witnesses. After thoroughly scrutinising their evidence, we do not find any direct or indirect interest of these witnesses to get the accused punished by falsely implicating him so as to mete out any vested interest. We are, therefore, of the considered view that the evidence of P.Ws.1 to 4 and 6 are quite reliable and we see no reason to disbelieve them."

The above observation of the Hon'ble Apex Court clearly shows that the evidence given by the relatives of the deceased can be safely accepted, if they are not discarded by the defence side. Therefore, though they are related to each other as well as to the deceased, their evidence cannot be simply thrown away because they are interested witnesses, more so, three of them are injured eyewitnesses.

10.In so far as the other piece of evidence, regarding recovery of weapon, it is stated that pursuant to the confessional statement, M.O.1 - was recovered in the presence of P.W.13. Ex.P.25 - Biological Report shows that human blood was detected from M.O.1. However, Ex.P.26 - Serological Report shows that the grouping test is inconclusive. Hence, the trial Court cannot be found fault in holding in all probability that human blood must be that of the deceased Rajamani, P.W.1 and P.W.10.

11.It is contended that there are contradictions regarding the place of occurrence, motive and weapon of crime. The occurrence took place on 17.02.2008 and the witnesses were examined on 09.12.2014 i.e., after six years. Therefore, due to passage of time, there may be some minor discrepancies, due to



lapse of memory. So, this slight discrepancy cannot be a ground to reject the evidence of the eyewitnesses altogether. The other discrepancies pointed out by the learned counsel for the appellant/accused are also trivial in nature, which cannot be a ground to disbelieve the case of the prosecution. Under such circumstances, this Court is of the considered view that the prosecution has proved its case beyond reasonable doubt that the accused has caused the death of the deceased and attempted to commit murder on P.W.10 and cause grievous injuries to P.Ws.1 and 8.

12.Insofar as the second line of argument is concerned, the Court is able to find force in the contentions put forth by the learned counsel for the appellant. According to the prosecution, the accused and P.W.1 are neighbours and they involved in committing forest offences and P.W.1 was remanded in Azhagiapandipuram Forest Range case and he was in judicial custody for 45 days. P.W.10 took him on bail and she prevented P.W.1 from accompanying the accused for cutting trees in the forest. Hence, often there were quarrels between the wife of the accused and P.W.10, wife of P.W.1. Likewise, on the occurrence day i.e., on 17.02.2008 at 6.00 p.m. there was quarrel between P.W.10 and wife of the accused. In continuation of the same, at about 9.30 p.m. on the same day there was quarrel and the accused provoked over the same took the Vettukathi, used to cut sandal wood, and attacked P.W.10 and when the deceased Rajamani, aged about 65, tried to prevent her, he was also attacked by the accused with the said Vettukathi. He was aged 65 years at the time of occurrence and died only after 12 day after his admission in the hospital. P.W.3 has also stated in her cross-examination that the deceased would have died of infection caused due to the 8th injury in the postmortem certificate. Thus the act of the accused in attacking the deceased is neither intentional nor premeditated, but, it was due to wordy altercation and due to the preventing of the accused by the deceased from attacking P.W.10 and thereby he has acted so and the act of the accused cannot be brought under the penal provision of 302 I.P.C., but it would attract the penal provision of Section 304 (Part I) I.P.C.

13.Our view is also supported by the ratio laid down by the Hon'ble Apex Court in **Dilip Kumar Mondal** (supra), wherein the Hon'ble Apex Court held that in order to invoke the applicability of Exception 4 to Section 300 I.P.C. the following conditions are to be satisfied:

“(i) that the incident happened without premeditation;

(ii) in a sudden fight;

(iii) in the heat of passion:

<https://hcservices.ecourts.gov.in/> upon a sudden quarrel and



(v) without the offender having taken undue advantage or acted in a cruel or unusual manner."

The above ratio would clearly and squarely covers the case of the appellant/ accused, the reason being as already stated above, the accused was provoked by the frequent quarrel between his wife and P.W.10 and when the accused attacked P.W.10, the deceased, who is the father of P.W.10, along with P.Ws.1 and 8 tried to prevent the accused from attacking P.W.10, consequently, the appellant/accused attacked the deceased without premeditation, in a sudden fight, in the heat passion upon a sudden quarrel without taking undue advantage or acting in a cruel or unusual manner. Hence, awarding a punishment of seven years rigorous imprisonment for the offence under Section 304 (Part I) would meet the ends of justice.

14. Accordingly, the Criminal Appeal is partly allowed and the conviction and the sentence of life imprisonment imposed by the trial Court on the accused/appellant under Section 302 I.P.C. in S.C.No.92 of 2009 are set aside, and instead, he is convicted under Section 304 (Part I) I.P.C. and sentenced to undergo seven years Rigorous Imprisonment. The fine amount imposed by the Trial Court under Section 302 I.P.C. is ordered to be treated as one imposed under Section 304 (Part I) I.P.C. The sentence imposed under Section 307 I.P.C. is reduced to 5 years Rigorous Imprisonment and the sentence of fine and default sentence imposed for that offence are sustained and the sentence imposed under Section 506(ii) I.P.C. is reduced to 3 years Rigorous Imprisonment. The sentences imposed under Sections 323 and 324 I.P.C. are confirmed. The appellant/accused is also granted set off under Section 428 Cr.P.C., for the period of incarceration undergone by him during trial and pendency of the appeal. The bail bonds executed by the accused shall stand cancelled and the respondent/police is directed to forthwith secure the appellant/accused for committing him to custody so as to undergo the remaining part of sentence.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sj



WEB COPY

To

- 1.The District and Sessions Judge,
Kanyakumari @ Nagercoil.
- 2.The Judicial Magistrate,
Padmanabhapuram.
3. The Superintendent, Central Prison, Palayamkottai.
- 4.The Inspector of Police,
Kulasekharam Police Station,
Kanniyakumari District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

JUDGMENT IN
Crl. A. (MD)No.156 of 2018
Delivered on **10.02.2020**

scr(CO)
TR(21.07.2020) 10P 8C