



BAIL SLIP

Gopal, Appellant/Sole Accused S/o. Veeran, was released on Bail vide court order dated 07.06.2018 made in CrI MP(MD)No.2812 of 2018 in CrI A(MD)No.173 of 2018.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CrI. A. (MD)No.173 of 2018

Gopal

... Appellant/Sole Accused

Vs.

The State rep. by
The Inspector of Police,
Woraiyur Police Station,
Tiruchirapalli.
(Crime No.477 of 2014)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, praying to set aside the conviction and sentence passed by the Principal Sessions Judge, Trichy in S.C.No.144 of 2015 dated 11.03.2016.

For Petitioner	: Mr.P.Mani Anandh for Mr.T.Leninkumar
For Respondent	: Mr.K.K.Ramakrishnan 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.144 of 2015 on the file of the Principal Sessions Judge, Tiruchirappalli and he stood charged, tried and convicted for the commission of offences under Sections 302 and 506(ii) I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- with default sentence of 1 year Rigorous Imprisonment for the offence under Section 302 I.P.C. and sentenced to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- with default sentence of 3 Months Rigorous Imprisonment for the offence under Section 506(ii) I.P.C. vide judgment dated 11.03.2016. The appellant/sole accused, aggrieved by the impugned judgment of conviction and sentence passed by the Trial Court, has filed this Criminal Appeal.



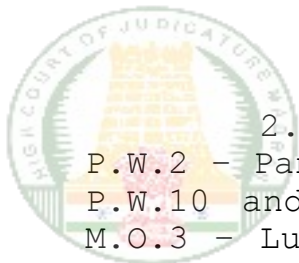
2. Facts leading to the filing of this Criminal Appeal, relevant for the purpose of disposal of this case, briefly narrated, are as follows:

2.1. It is the case of the prosecution that P.W.1 - Ilavarasan, cousin brother of the deceased Rajendran, had lend a sum of Rs.1,000/- to the appellant/Accused Gopal. On 01.09.2014, P.W.1 demanded the accused to pay back the said amount, but the accused evaded payment. Thereupon, on 02.09.2014 at 11.00 a.m., P.W.1 went to the house of the accused along with the deceased. After introducing him as brother of P.W.1, the deceased demanded the repayment of the money. The accused sought time for payment of the amount. Hence, there was a quarrel between the deceased Rajendran and the accused and at the end of the quarrel, the deceased Rajendran said to have pushed the appellant down. Since the said occurrence took place inside the house of the appellant/accused, the appellant/accused taking M.O.1 - Aruval and attacked the deceased on his face. Pursuant to the same the deceased fell down. When P.W.1 tried to prevent the attack, the accused tried to attack P.W.1 and hence, P.W.1 ran away from the place of occurrence. Then, the accused took a big stone - M.O.2 and put it on the head of the deceased and the deceased succumbed to the injuries. Thereafter, P.W.1 went to the Woriyur Police Station and gave Ex.P.1 - complaint.

2.2.P.W.12 - Dayalan, the Sub Inspector of Police, Woriyur Police Station, on 02.09.2014 at 1.00 p.m. received the complaint from P.W.1 and registered a case in Crime No.477 of 2014 under Section 302 I.P.C. The printed F.I.R. is marked as Ex.P16. P.W.12 despatched the original F.I.R. and original complaint to the Court of jurisdictional Magistrate and copy of the same to P.W.13 - Raju, Inspector of Police, Woriyur Police Station and higher officials.

2.3.P.W.13 took up the investigation and on 02.09.2014 at about 2.15 p.m. proceeded to the scene of crime and prepared the Observation Mahazar and the Rough Sketch marked as Exs.12 and 17 respectively in the presence of P.W.10 - Chandrasekar and one Sethupathy and recovered M.O.7 - Blood stained floor cement mortar piece and M.O.8 - sample floor cement mortar piece under Ex.P.13 - recovery mahazar in the presence of the same witnesses and sent the same to the Court along with Form 95 - Ex.P.18. On the same day from 4.15 to 6.30 p.m., he conducted inquest on the body of the deceased in the presence of Panchayatars. The Inquest Report was marked as Ex.P.19. Then he sent the body of the deceased to the Government Hospital, Tiruchirappalli through P.W.8 - Narayanan, Head Constable along with requisition - Ex.P.9.

2.4.P.W.5 - Dr.Saravanan, Assistant Professor, Department of Forensic Medicine, K.A.P.V. Government Medical College, Tiruchirappalli conducted postmortem on the body of the deceased on 03.09.2014 at 11.15 a.m. and found the following antemortem injuries:



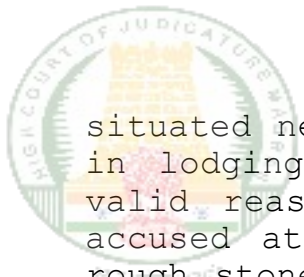
2.5. P.W.13 continued the investigation and examined P.W.1, P.W.2 - Panneerselvam, P.W.3 - Sumithra Devi, Stephen, Ravichandran, P.W.10 and Sethupathy and recorded their statements. He recovered M.O.3 - Lungi, M.O.4 - red colour shirt and M.O.6 Jatty taken from the dead body through P.W.8 in Ex.P.11 - Form 95. On 03.09.2014 at 6.00 a.m. P.W.13 arrested the accused on the northern bund of Uyyakondan Channel in the presence of P.W.11 - Narayanan, Village Administrative Officer of Puthur Village and Village Assistant Manoharan and recorded the confession statement given by the accused voluntarily. Ex.P.15 is the admissible portion of the confession statement. Pursuant to the same, he recovered M.O.1 - Aruval and M.O.5 - blood stained shirt produced by the accused from a bush under Ex.P.14 - Mahazar. Thereafter, he sent the accused for judicial custody and the material objects to Court through Ex.P.20 - Form 95. Then, he altered the F.I.R. from Section 302 I.P.C. to Sections 302 and 506(ii) I.P.C. Ex.P.21 is the alteration report. He sent requisition - Ex.P.9 to the Court to send the material objects for chemical analysis. After receiving Ex.P.5 - Biological report and Exs.P.7 and 8 - Serological reports and completing the investigation he had filed the Charge Sheet before the Court of Judicial Magistrate No.IV, Tiruchirappalli, charging the appellant/accused for the aforesaid offences and the learned Judicial Magistrate No.IV, Tiruchirappalli took it on file in P.R.C.No.12 of 2015.

2.8. The Committal Court issued summons to the accused and on his appearance, furnished him copies of documents under Section 207 CrPC and having found that the case is exclusively triable by the Sessions Court, had committed the same to the Principal Sessions Court. Tiruchirappalli, which took it on file in S.C.No.144 of 2016. The appellant/accused was issued with summons and on his appearance, charges under Sections 302 and 506(ii) IPC have been framed.

2.9. The prosecution, in order to sustain its case, examined PWs.1 to 13, marked Exs.P1 to P21 and also marked M.Os.1 to 8. 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 on his side.

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 11.03.2016 and challenging the same, the present Criminal Appeal is filed.

3. Mr. P. Mani Anandh, learned counsel appearing for the appellant/accused would submit that P.W.1 has deposed that during the quarrel, the deceased pushed down the appellant/accused and hence, it is clear that the accused had pushed down the deceased only to safeguard himself from the deceased. It is the admitted case of the prosecution that the deceased and P.W.1 only came to the house of the accused and the occurrence has also happened in the house of the accused. Though the respondent Police Station is



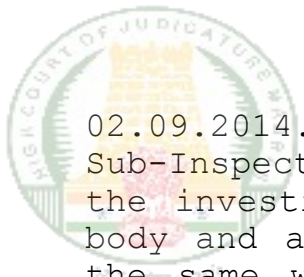
situated near the occurrence place, there was a delay of two hours in lodging the complaint and the prosecution did not assign any valid reason for the delay. According to the prosecution, the accused attacked the deceased with Aruval and thereafter threw a rough stone on the deceased and the deceased succumbed to the said injuries. However, P.W.5, the doctor who conducted the postmortem deposed that out of 15 injuries three injuries are stab injuries. If the case of the prosecution that the accused attacked the deceased with Aruval is true, then there will not be any stab injury. P.W.1 deposed that he was present at the time of occurrence but, he did not make any attempt to rescue the deceased, although the appellant did not make any threat to him. Contrary to the said statement, P.W.2 deposed that at the time of occurrence, the appellant threatened P.W.1 that if he comes closer, he will do away with him. This proves the falsity of the prosecution case. The entire occurrence took place inside the house of the accused. Prior to the occurrence there was a scuffle between the accused and the deceased and the occurrence took place in a spur of the moment and there was no pre-meditation to the accused before the occurrence. Therefore, it is not a case of conviction for offence under Section 302 I.P.C. and it has to be modified to one under Section 300 exception 4 of I.P.C. In support of his submission, learned counsel appearing for the appellant relied on the decision of the Hon'ble Apex Court in **Dilip Kumar Mandal & Anr. v. State of West Bengal [2015-2-L.W. (Crl) 629]**.

4. On the other hand, Mr. K. K. Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent/State would submit that the prosecution has established their case through the evidence of P.Ws.1 and 2 and their evidence was corroborated by the evidence of P.W.5, the postmortem doctor. The recovery of weapons were proved through P.W.11. Serological reports prove that the same 'O' group blood was detected in the shirt of the accused as well as the shirt of the deceased and the weapon of crime M.O.1. The accused used deadly weapon aruval and inflicted injury on the vital parts of the deceased and having not stopped with that, the accused had thrown the big stone M.O.2 on the head of the deceased. Hence, it is not open to the accused to claim that his act would come within the purview of Section 300 Exception 4 I.P.C. and the trial Court has rightly come to the conclusion that the prosecution has proved the case beyond all reasonable doubts. Therefore, such a finding cannot be set aside.

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 guilt of the accused beyond any reasonable doubt in the light of the evidence let in?

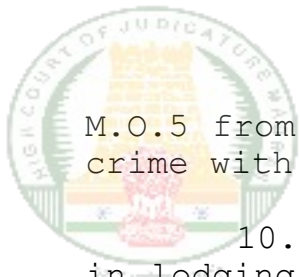
7. It is not in controversy that cousin brother of P.W.1 was done to death in an incident that took place at about 11.30 a.m. on



02.09.2014. Following the registration of the case by P.W.12, the Sub-Inspector of Police, the investigation was taken up by P.W.13, the investigating officer and he also made an inquest on the dead body and after inquest, the dead body was sent for postmortem and the same was conducted by P.W.5, the Doctor. The prosecution was able to establish the fact that the deceased died of multiple injuries sustained by him by examining P.W.5, postmortem doctor before the Court and through the contents of Ex.P.2, postmortem certificate. P.W.5 has deposed that out of the 15 injuries, injuries No.1 to 6 are abrasions and they would have been caused due to fall on the ground, injuries No.7 to 13 are cut injuries and those injuries would have been caused by using M.O.1 - Aruval and injuries No.14 and 15 could have been caused if stone like M.O.2 was thrown on the head and the doctor has specifically denied that injuries No.14 and 15 would not occur when fell on the sharp edge of the stone. Further, the fact that the deceased Rajendran died out of homicidal violence was never disputed by the appellant/accused before the trial Court. Hence, there is no impediment for the trial Court in recording so.

8. In order to substantiate that it was the accused/appellant who caused the death of the deceased, the prosecution rested its case on the direct evidence of P.Ws.1 and 2, who are the eyewitnesses, apart from the other circumstances attendant. It is true that P.W.1 is closely related to the deceased. It is settled principle of law that merely on the ground of relationship with the deceased, his evidence cannot be discarded, but, before accepting it, it should be tested by careful scrutiny. Even after the application of the test, this Court is satisfied that he has witnessed the occurrence. P.W.1 has clearly spoken that at the time of occurrence he was along with the deceased, and at that time, the deceased demanded the money owed by P.W.1, and the accused replied that he will give money in the next week. Due to that there was a wordy quarrel between them and the accused took the aruval and attacked the deceased and when he fell down put the stone on the deceased and caused his death instantaneously. This evidence was corroborated by P.W.2. Despite the cross-examination in full, the evidence of P.Ws.1 and 2, eyewitnesses remained unshaken. Hence, the trial Judge is perfectly correct in accepting the evidence of P.Ws.1 and 2 and this ocular testimony projected through P.Ws.1 and 2 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 weapons of crime.

9. In so far as the other piece of evidence, regarding recovery of weapon, pursuant to the confessional statement, M.O.1 - Aruval and M.O.5 - bloodstained shirt were recovered in the presence of P.W.11. Ex.P.7 - Serological Report proves that the blood detected from M.Os.3 and 4 recovered from the dead body of the deceased and M.Os.1 and 5 recovered pursuant to the confession of the accused belong to the same 'O' group. Thus recovery of M.O.1 and



M.O.5 from the accused would also clearly indicate the nexus of the crime with the accused.

10. Though it is contended that there is a delay of two hours in lodging the complaint, from the evidence, it is quite clear that while the accused assaulted the deceased, P.W.1 tried to intervene, but the accused threatened to cut him if he intervene. Hence, fearing danger to his life, P.W.1 ran away and thereafter has given Ex.P.1 - complaint and on the strength of it a case came to be registered. Under such circumstances, the delay of two hours is not fatal to the prosecution case and it leaves no reasonable doubt to disbelieve the document Ex.P.1 - complaint and the corresponding F.I.R.

11. 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. Admittedly, P.W.1 and the deceased invited the trouble by going to the house of the appellant/accused. It was also further established that in the presence of P.W.1, the deceased demanding money pushed the accused forcibly down and only thereafter, the accused aggrieved over the same took an aruval and a stone from his house and has caused the death of the deceased and thus the act of the accused is neither intentional nor premeditated. But, it was due to sudden wordy altercation and due to the pushing down of the accused by the deceased, he was provoked and thereby he has acted so. All the above would indicate, the act of the accused was neither intentional nor premeditated, but, due to sudden quarrel and provocation 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.

12. 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;
- (iv) 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, only P.W.1 in order to get back the money lend to the accused/appellant went to the house of the appellant/accused along with the deceased and the deceased demanded the money and pushed him down, consequently, the appellant/accused attacked the deceased without premeditation, in a sudden fight, in the heat of 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) and reducing the punishment of seven years to five years rigorous imprisonment for the offence under Section 506(ii) I.P.C. would meet the ends of justice.

13. 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. are set aside, and instead, he is convicted under Section 304 (Part I) I.P.C. and sentenced to undergo seven years Rigorous Imprisonment and he is sentenced to undergo five years rigorous imprisonment for the offence under Section 506(ii) I.P.C. instead of seven years. The imprisonment already undergone by the accused/appellant shall be given set off. 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. and fine imposed for the offence under Section 506(ii) I.P.C. stands confirmed. The bail bonds executed by the accused shall stand cancelled. The respondent is directed to take steps to procure the accused for undergoing the remaining period of sentence.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sj

To

- 1.The Principal Sessions Judge,
Tiruchirappalli.
- 2.The Judicial Magistrate No.IV,
Tiruchirappalli.
- 3.The Chief Judicial Magistrate,
Trichy.
- 4.The Inspector of Police,
Woraiyur Police Station,
Tiruchirapalli.
- 5.The Superintendent Central Prison,
Trichy.

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



6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

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

+1 CC to Mr.T.LENINKUMAR, Advocate (SR-7863[F] dated 24/02/2020)

Crl. A. (MD)No.173 of 2018
21.02.2020

VB (20.07.2020) 9P 10C