



BAIL SLIP

CRL A (MD) No.202 of 2018:

Kalimuthu, S/o.Sankar, 2nd Accused was released on bail vide order of this Court dated 30.08.2018 made in Crl MP(MD) No.6760 of 2018 in Crl A (MD) No.202 of 2018.

CRL A (MD) No.258 of 2018:

Satham Hussain, S/o.Mohamed Kasim, 1st Accused was released on bail vide order of this Court, dated 01.08.2018 made in Crl MP(MD) No.3888 of 2018 in Crl A (MD) No.258 of 2018.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Criminal Appeal (MD) Nos.202 and 258 of 2018

Kalimuthu .. Appellant in Crl.A (MD) No.202 of 2018/Accused
No.2

Satham Hussain .. Appellant in Crl.A (MD) No.258 of 2018/Accused
No.1

Vs.

1. State, Rep. By
Deputy Superintendent of Police,,
Umatchikulam Sub-Division,
Madurai, Madurai District

..1st Respondent in both Criminal Appeals/
Complainant

2. Inspector of Police,
Y.Othakadai Police Station,
Madurai.

(Crime No.401/2017) .. 2nd Respondent in Crl.A (MD) No.202 of 2018
/Complainant

Common Prayer: Criminal Appeals filed under Sections 374 and 374(2) of Cr.P.C. by the appellants challenging the judgment of conviction and sentences passed by the III Additional District and Session Judge for PCR Cases, Madurai, Madurai District, in Special S.C.No.86 of 2017, dated 21.02.2018.

For Appellants : Mr.N.Anantha Padmanaban
for M/s.APN Law Associates in
Crl.A (MD) No.202 of 2018
and for Mr.M.Seenisulthan in
Crl A (MD) No.258 of 2018

For Respondents : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

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

The appellant in Crl.A(MD)No.202 of 2018 is Accused No.2 and the appellant in Crl.A(MD)No.258 of 2018 is Accused No.1 in S.C.No.86 of 2017 on the file of the learned III Additional District and Session Judge, Madurai. They stood charged for offences under Sections 3(1)(s) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (in short "SC/ST Act") read with 34 IPC, 294(b) IPC, 341 r/w 34 IPC r/w 3(2)(Va) of SC/ST Act and 302 r/w 34 IPC, 3(2)(V) of SC/ST Act. The trial Court, by judgment dated 21.02.2018, convicted and sentenced them as follows:-

SL No.	Conviction under Sections	Sentence
1.	294(b) I.P.C.	1 month S.I. with fine of Rs.100/ i/d 10 days S.I.
2.	341 r/w 34 I.P.C. r/w 3(2)(Va) of SC/ST Act	1 month S.I. with fine of Rs.500/ i/d 10 days S.I.
3.	3(1)(s) of SC/ST Act r/w 34 I.P.C	1 Year R.I. with fine of Rs.500/ i/d 3 months S.I.
4.	302 r/w 34 I.P.C., 3(2)(V) of SC/ST Act	Life Imprisonment with fine of Rs.1000/ i/d 3 months S.I.

The sentences were ordered to run concurrently. Aggrieved by the impugned judgment of conviction and sentence passed by the learned trial Court, the appellants/Accused Nos.1 and 2 have filed the present Criminal Appeals.

2. The case of the prosecution, in brief, is as follows:-

2.1. One Nagajothi-P.W.1 is the wife of deceased Alagarsamy, who was an auto-driver. They are blessed with two male children and one female child. They belonged to Hindu Arunthathiyar Community and they were residing at 2/30, Rajakoor Periyar Nagar Apartment, Madurai District. A1 and A2 were also residing in the said Apartment and they used to tease the ladies in that area. One week prior to the occurrence, the deceased, P.W.5 - Muthukumar and one Vetrivel questioned the same and there was a quarrel. Due to that enmity, on 09.07.2017 at about 3.30 p.m., when P.W.1 and the deceased were near their house, A1 and A2 came there and abused the deceased in filthy language touching upon his caste and when he questioned the same, A2 caught hold of the deceased from behind and A1 stabbed him on his left. Immediately, P.Ws.1 to 4 took the deceased to Madurai



Government Rajaji Hospital.

2.2. On 09.07.2017 at about 5.00 p.m., on receipt of the information about the incident, P.W.11 - B.Ravichandran, Special Sub-Inspector of Police, Othakadai Police Station, rushed to the Hospital and since the deceased was unconscious, he recorded the statement from his wife-P.W.1 and registered a case in Crime No.401 of 2017 under Sections 294(b), 342, 307 I.P.C. and Section 3(2)(v) of SC/ST Act. The printed F.I.R. was marked as Ex.P19. Subsequently, the same was forwarded to the Court of jurisdictional Magistrate, marking a copy to P.W.15 - Vanitha, Deputy Superintendent of Police. P.W.15-DSP, in the presence of P.W.13 - Manikandan and one Chandrasekaran, prepared Observation Mahazar and Rough Sketch, which were marked as Exs.P.10 and P14 respectively. She examined P.W.13 - Manikandan and Chandrasekaran and recorded their statements. On secret information, at about 7.45 p.m. she arrested the accused in their houses in the presence of P.W.14 - Niwaz Perumal and one Surendar and recorded their confession statements voluntarily given by them. The admissible portion of the confession statement of A1 is marked as Ex.P.12 and pursuant to the same, she recovered M.O.(Material Object) 1 - knife produced by A1. She sent M.O.1 under form 95 - Ex.P.15 to the Court of jurisdictional Magistrate and sent the accused for judicial custody. Then she examined P.W.14 - Niwaz Perumal, Surendar, P.W.2, P.W.5, P.W.3, P.W.4 and recorded their statements.

2.3. On 09.07.2017 at about 7.00 p.m. P.W.16 - Dr.Sharmila and P.W.17 - Dr.M.Muthukumar conducted operation for the injury caused to the deceased. P.W.7 - Dr.Mohankumar, who was on duty in the Madurai Government Rajaji Hospital on 12.07.2017, examined the deceased and found that the deceased breath his last at about 7.50 p.m. on 12.07.2017. The death intimation issued by him was marked as Ex.P.3. Then he sent the body of the deceased to the mortuary.

2.4. On 12.07.2017 at about 9.45 p.m., P.W.15 got the information about the death of the deceased and altered the offences of the F.I.R. into 294(b), 342, 302 I.P.C. r/w 3(2)(V) of SC/ST Act. The alteration report sent by her to the Court is marked as Ex.P.16. At about 08.00 a.m. on 13.07.2017, she conducted inquest on the body of the deceased and prepared Ex.P.17 - inquest report and she sent the dead body for postmortem with requisition. Thereafter, P.W.8 - Dr.S.Saravanan, who was the Tutor in Forensic Medicine attached to Madurai Medical College, conducted postmortem on 13.07.2017 at 11.00 a.m. and found the following antemortem injuries:

"1.Sutured wound measuring 11cm x 1cm x bone deep noted on left upper chest, 2cm lateral to left side of the sternal notch extending to left shoulder.

On dissection: The underlying clavicle bone found fractured with surrounding bruise noted. Suture noted on left subclavian artery.

2.Sutured wound measuring 11cm x 1cm x muscle deep noted on inner aspect of left forearm."



The postmortem report was marked as Ex.P.4. He opined that the deceased appears to have died of external injury No.1 and its corresponding internal injuries and its complications thereof. His Final Opinion was marked as Ex.P.5.

2.5. Continuing her investigation, P.W.15-DSP examined P.W.6 - Sumathi, P.W.7 - Dr.Hemand Kumar, P.W.11 - Ravichandran, Special Sub-Inspector of Police, P.W.12 - M.Ravichandran, Police Constable and recorded their statements. She also recovered M.O.2 - bloodstained full hand shirt of the deceased from the relatives of the deceased through P.W.12 under Form 91 - Ex.P.18. She made requisition to the concerned Judicial Magistrate for sending the Material Objects for Chemical analysis. On 05.08.2017, she made requisition to the Tahsildar, Madurai East, for issuing Community Certificates for the deceased, P.W.1 and the accused. As per the provisions of SC/ST Act and as per the proceedings of the Principal District Judge, Madurai dated 24.08.2017, the F.I.R. was transferred from the file of the Judicial Magistrate, Melur to the file of the learned III Additional District and Sessions Judge (P.C.R.), Madurai. On 31.08.2017, she examined P.W.8 - Dr.Saravanan, who conducted autopsy on the body of the deceased and recorded his statement. Then she examined P.W.10 - Karuppiah, Tahsildar, who issued the community certificates for the deceased, P.W.1 and the accused, Sudhananthan, Head Clerk of the Judicial Magistrate Court, Melur, P.W.9 - Vijayendran, the scientific expert and recorded their statements. On 31.08.2017, she altered the F.I.R. for the offence under Sections 294(b), 342, 302 I.P.C. r/w 3(1)(R), 3(1)(S) and 3(2)(5) of SC/ST Act and sent the alteration report to the learned III Additional District and Sessions Judge (PCR), Madurai. Her alteration report was marked as Ex.P.19. After completing the investigation, P.W.15 had filed the Charge Sheet on the file of the Court of III Additional District and Sessions Judge (PCR), Madurai, charging the appellants/accused for the aforesaid offences, who took it on file in Special S.C.No.86 of 2017.

2.6. The Special Court issued summons to the accused and on their appearance, furnished them copies of documents under Section 207 CrPC and having found that the case is exclusively triable by the said Court, framed charges under Sections 3(1)(s) of SC/ST Act r/w 34 I.P.C., 294(b) I.P.C., 341 r/w 34 I.P.C. r/w 3(2)(Va) of SC/ST Act and 302 r/w 34 I.P.C., 3(2)(V) of SC/ST Act.

2.7.The prosecution, in order to sustain its case, examined PWs.1 to 17, marked Exs.P1 to P20 and also marked M.Os.1 & 2. The appellants/accused were questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances made out against them and they denied it as false and the case has been foisted against them. On the side of the appellants/accused D.Ws.1 to 3 were examined, but, no document was marked.

2.8.The Trial Court, on a consideration of oral and documentary evidence and other materials, had found the appellants/accused guilty of the offences and sentenced them as stated above, vide

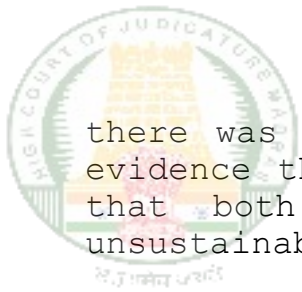


impugned judgment dated 25.01.2018 and challenging the same, the present Criminal Appeals have been filed.

3. Assailing the impugned judgment, learned counsel appearing for the appellants/accused submitted that although the respondent police examined P.W.1 to P.W.3, who are interested witnesses and also known to the deceased family, they have purposefully omitted to examine other witnesses available and therefore, the evidence of PW1 to PW3 have no legal sanctity and the impugned conviction based on the evidences PW1 to PW3 is not legally sustainable. Arguing further, he contended that PW1-wife of the deceased herself admitted that she did not write and aware of the contents of the complaint and that she only put her signature on the complaint prepared by some other person and therefore, complaint and FIR are not genuine. It is further submitted that when the complaint and FIR are the basic documents for criminal case, if they are doubted, then the entire prosecution cases has to be thrown out and the benefit of doubt should be given to the appellants/accused.

4. Continuing his arguments, learned counsel contended that the deceased said to have sustained injuries on 09.07.2017, however, the deceased died only after 3 days from the date of occurrence, that shows his death was accelerated by inefficient medical treatment and therefore, framing of charge under Section 302 IPC is not legally and the learned Court below ought to have framed the charge either under Section 304 IPC or under Section 304 part II of IPC. Besides, he argued that the wife of the deceased-PW1, in her cross examination, admitted that there was a wordy quarrel between the deceased and the appellants for about half an hour before the deceased was attacked, hence, in such circumstances, convicting the appellant/A1 is highly illegal.

5. In respect of appellant/A2 in Crl.A.No.202 of 2018, learned counsel argued that the learned trial Court has wrongly proceeded that the appellant/A2 had caught hold of the deceased from behind to facilitate the first accused to inflict the stab injury, which is an afterthought as there was a quarrel for more than half an hour ever as per the evidence of PW1. Only consequent to the said quarrel, A1 is staid to have inflicted a single stab on the left side collarbone region, above the chest, and except for this single stable injury, there is no other injury found on the body of the deceased. According to Medical Expert, namely, PW16-Dr.Sharmila and PW17-Dhr.Muthukumar, during the period of surgery, the deceased was totally conscious and he was alive and remained treatment till 13.07.2017, that shows that when the deceased was alive and remained in treatment till 13.07.2017, in view alleged stab injury caused by A1, A2 cannot be inflicted warranting conviction under Section 302 IPC. In addition thereto, P.W.1 admitted that there was some celebration and during such celebration, all the neighbours used to participate by consuming liquor. Therefore, when PW1 deposed that

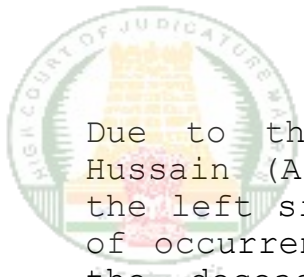


there was a quarrel for about 30 minutes, in the absence of clear evidence that A2 inflicted injury, convicting A2 also on the basis that both of them committed crime with common intention is unsustainable.

6. Learned Additional Public Prosecutor appearing for the respondent police submitted that one Nagajothi, wife of deceased Alagarsamy, preferred a complaint stating that A1 and A2 residing near her residence often tease the girls and women who were residing in that area and the same was also warned by her husband/deceased and his friends. Due to such enmity, on 09.07.2017, both A1 and A2, joining together, stabbed her husband using knife. Immediately thereafter, he was rushed to Rajaji Government Hospital, Madurai, where he was declared as dead. Subsequently, a complaint was registered in Cr.No.401/2017 for offences under Section 294(b), 324, 307 IPC and 3(2)(v) of SC/ST At and taken up for investigation. During the investigation, the respondent police arrested the accused person on the same day of occurrence i.e. on 09.07.2017. But, within 3 days, on 12.07.2017, getting death intimation of the deceased, penal provision of the case was altered into 294(b), 342, 302 IPC read with 3(2)(v) of SC/ST Act and sent the alteration report to the concerned authorities. After proper investigation, the respondent police filed charge sheet before the PCR Court, Madurai, and the same was taken on file in Spl.S.C.No.86 of 2017. Learned trial Court, after examining 17 prosecution witnesses and perusing 20 exhibits and 2 M.Os., convicted both the accused and sentenced them as stated supra. Learned trial Court, after perusing Ex.P4-postmortem report, noted that the deceased suffered sutured wound measuring 11 cm x 1 cm x bone deep on the left upper chest, 2cm lateral to left side of the sternal notch extending to left shoulder; besides, it has also taken note of final opinion/Ex.P5 dated 29.08.2017 submitted by P.W.8-Dr.S.Saravanan, Tutor in Forensic Medicine, Madurai Medical College, whereby he opined that the deceased appears to have died of external injury No.1 and its corresponding internal injuries and its complications thereof. Therefore, after perusing these vital exhibits, learned trial Court has rightly come to the conclusion that the prosecution has proved the case beyond the reasonable doubt, hence, impugned judgment of conviction and sentence passed by the learned trial Court do not call for interference.

7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8. PW1/defacto-complainant, wife of the deceased, was a witness to the fateful incident occurred on 09.07.2017. She gave a complaint-Ex.P1 before the respondent police stating that the appellants herein/accused, who are also residing nearby her residence, often used to tease the girls and women residing in that area. Therefore, her husband warned them not to repeat the same.



Due to this enmity, on 09.07.2017, Kalimuthu (A2) and Samtham Hussain (A1)/appellants herein stabbed her husband using knife on the left side of the chest and thereafter, they fled from the scene of occurrence. In view of grievous injuries caused on his chest, the deceased suffered bleeding and he was rushed to Madurai Government Rajaji Hospital. Although he was given treatment for 3 days, he succumbed to injury on 12.07.2017. Therefore, a case was registered in Crime No.401 of 2017 for offences under Sections 294 (b), 324, 307 IPC read with 3(2)(v) of SC/ST Act on the file of Othakadai Police Station and this was later-on altered into Sections 342, 302 IPC read with 3(2)(V) of SC/ST Act and alteration report was also sent to the concerned Magistrate Court. The respondent police, after proper investigation, filed a charge sheet before the PCR Court, Madurai, and the same was taken on file in S.C.No.86 of 2017 on 08.11.2017.

9. When A1 was arrested, he confessed before the P.W.15-Deputy Superintendent of Police that he used knife to kill the deceased and that the said knife is kept on the backside of the deceased home. This confession statement was marked as Ex.P12. Subsequently, P.W.15, after seizing the knife, sent M.O.1-knife under form 95-Ex.P15 to the Court of jurisdictional Magistrate and sent the accused for judicial custody. After completion of investigation, based on the confession statement of the accused, P.W.15 had laid the charge sheet on 01.08.2017. Therefore, taking note of the deposition of P.W.1-wife of the deceased that there was a previous enmity between the accused and the deceased for having warned them not to tease anyone of the girls and women residing in that area and hence, due to such enmity, on the fateful day, A1 stabbed him on his left side of the chest, while the deceased was caught hold by A2 from his behind; and that the depositions of P.W.2-Jeyalakshmi, P.W.3-Premkumar, P.W.4-Muthukumar, P.W.5-Muthukumar, and P.W.6-Muthumar @ Mariyammal, all are residing in the same area, corroborating the deposition of P.W.1-wife of the deceased, learned trial court has rightly accepted the case of the prosecution that the accused/appellants, in a fit of rage, stabbed the deceased with knife due to their previous enmity.

10. It is seen from the postmortem report-Ex.P4 submitted by P.W.8-Dr.S.Saravanan, Tutor in Forensic Medicine, Madurai Medical College, Madurai, that the accused have jointly caused sutured wound measuring 11 cm x 1 cm x bone deep on the left upper chest; 2 cm lateral to left side of the sternal notch extending to left shoulder; and sutured wound measuring 11 cm x 1 cm x muscle deep on inner aspect of left forearm. Besides, it is seen from the final opinion/Ex.P5 dated 29.08.2017 of P.W.8 that the deceased appears to have died of external injury No.1 and its corresponding internal injuries and its complications thereof. Therefore, by taking note of these vital documents, learned trial Court has rightly imposed the conviction and sentence as stated supra against both the



accused. Hence, this Court does not find any perversity in the order passed by the learned trial Court warranting interference.

11. Learned counsel for the appellants/accused has relied on a decision of the Hon'ble Apex Court in the case of **Atul Thakur Vs. State of Himachal Pradesh, etc. [2018 STPL 1203 SC]** to contend that when the occurrence was sudden and not premeditated and the offender acted in the heat of passion, the fact that the appellant used weapon such as knife, is not a decisive factor to attract Section 302 IPC. This Court is unable to accept this argument as well, for the reason that the said incident occurred on 09.07.2017, which lead to cause of death of the deceased, was not a sudden one, inasmuch as when the deceased had warned both the accused not to tease girls and women residing in the same area where the appellants are also residing, the said incident lead to enmity and finally on 09.07.2017, both the accused joining together had caused injuries to the deceased on the left side of his chest, that has lead to death of deceased. Therefore, considering the nature of offence that it was not a sudden and premeditated one and the fact that the appellants had used the deadly weapon such as knife to cause deadly injuries on the left side chest of deceased, we are of the considered view that there is no error apparent, infirmity or illegality in the reasons assigned by the learned trial Court in convicting and sentencing the accused.

12. In the result, these Criminal Appeals are dismissed by confirming the judgment of conviction and sentence passed against the appellants/accused dated 21.02.2018 passed in S.C.No.86 of 2017 by the learned III Additional District and Sessions Judge for PCR Cases, Madurai. It is to be noted that earlier, the sentence imposed on the appellants was suspended pending disposal of these appeals and therefore, bail bonds executed by them shall stand cancelled/terminated. The respondent/Investigating Officer as well as the trial Court are directed to take expeditious steps to secure the custody of the appellants/accused for the purpose of undergoing the remaining period of sentence.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The III Additional District and Sessions Judge for PCR Cases, Madurai.



2.The District Collector,
Madurai District, Madurai.

3.The Deputy Superintendent of Police,,
Umatchikulam Sub-Division,
Madurai.

4.The Superintendent,
Central Prison, Trichy.

5.The Superintendent,
Central Prison, Madurai.

6.The Inspector of Police,
Y.Othakadai Police Station,
Madurai.

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

Criminal Appeal (MD) Nos.202
and 258 of 2018
24.01.2020

SGS (CO)
KK(10.11.2020) 9P 8C