



Bail Slip

Prabhu aged 23 Son of Rasu @ Thangamuthu Allasamy Koil Street, Mevani, Gobi Taluk, Accused in Cr.No.296/2013 on the file of the Inspector of Police Gobichettipalayam and in SC No.30 of 2015 on the file of the III Additional District Judge, Gobichettipalayam was released on bail in CrI.M.P.No.2950 of 2016 in CrI.A.No.204 of 2016 as per the orders of this Hon'ble Court dated 21.03.2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 25.10.2021	Date of Pronouncing Order 09.11.2021
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

CrI.A.No.204 of 2016

Prabhu

... Appellant

Vs.

State rep.by
The Inspector of Police,
Gobichettipalayam Police Station,
Gobichettipalayam,
Erode District.
(Crime No.296/2016)

... Respondent

PRAYER : Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment of the learned III Additional District and Sessions Judge, Gobichettipalayam in S.C.No.30 of 2015 dated 03.02.2016 and allow this appeal.

For Appellant : Mr. P. Dinesh Kumar

For Respondent : Mr. S. Vinoth Kumar
Public Prosecutor

J U D G M E N T

The matter is heard through "Video Conference".



2. Convicted sole accused is the appellant herein.

3. The case of the prosecution is that

3(a). the deceased-Ramasamy is the father-in-law of P.W.2/Chitra. P.W.1 is the husband of P.W.2. The deceased came to know that the accused passing rumour as if, he is having intimated relationship with P.W.2.

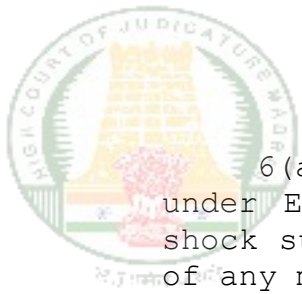
3(b). on 21.04.2013, at about 9.00 pm, while the deceased and his son P.W.1 and his wife P.W.2 and P.W.3 brother of P.W.1 was standing near the house, the accused went through the same thing and the deceased had questioned as to why he falsely generating rumour as if, P.W.2 is having illicit relationship with him and thereby, touching upon the chastity of P.W.2, resulted in pull and push, wherein, the accused said to have prevented and he forcibly pushed the deceased and he fell down and sustained injuries on head, neck, forehead and left knee.

3(c) While he was taking treatment in the hospital, Ex.P12/complaint was registered by P.W.14/Sub Inspector of Police. Since his condition is worsened, he was recommended to nearby district hospital, on that day, he was found to be struggling. Again, he was brought to the same hospital and there he was declared dead and hence, under Ex.P13/FIR, Section was altered under Ex.P16, whereby, 302 of IPC was included in the charge sheet and after investigation, final report has been filed. The case has been taken on file as S.C.No.30/2015.

4. During trial, on the prosecution side, P.W.1 to P.W.15 were examined and Exs.P1 to P.18 were marked. Further, M.O.1 to M.O.4 were also marked.

5.The trial Court, based upon the evidence, came to the conclusion that the act of the accused on the body of deceased does not prosecute the offence under Section 302 of IPC. However, framed the charges under Section 304(ii) IPC and sentenced to seven years rigorous imprisonment.

6. The sum and substance of the contention of the learned counsel for the appellant is that non-examination of wife of the deceased whose name is found in the FIR is entered in the prosecution and no independent witness was examined to prove the case of the prosecution. Since, P.W.5/Gopal and P.W.10/Nandhakumar are independent witnesses have turned hostile. Furthermore, there is a delay in registering the FIR.



6(a). The third contention of the learned counsel is under Ex.P6/Post-mortem Report, the cause of death is shown as shock sustained by the deceased due to injuries. In the absence of any motive or intention, if at all under Section 324 of IPC.

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7. Heard, the learned Public Prosecutor.

8. After perusing the oral evidence of P.W.1 to P.W.15 and documentary evidence and submission of both counsels, the son of the deceased is examined as P.W.1 and his wife is examined as P.W.2. The brother of P.W.1 is P.W.3 and neighbour is examined as P.W.4. P.W.5/Gopal and P.W.10/Nandakumar are projected as independent witnesses said to have seen the occurrence are turned hostile. Ex.P4/Accident register has deposed the nature of injury found on the injured at the time of his admission and P.W.14 is the Sub Inspector of Police. Ex.P12 is the complaint given by deceased Ramasamy. The deceased died due to the injuries and the statement was recorded at 2.20 am and he died at 3.30 pm in the hospital.

9. The post-mortem was conducted by P.W.12/Dr.Kalyani and Exs.P6, P7 and P8 along with forensic report, she has stated that the cause of the death is not due to injuries and hence, the trial Court has rightly come to the conclusion that it is a homicidal violence and died due to the injuries and the trial Court has rightly held that in the absence of any motive or intention or preplanned to attack the deceased, it is happened in a sudden quarrel and came to the conclusion that the charge under Section 302 of IPC is not made out. However, 304(ii) alone is made out.

10. P.W.11/Dr.Kavitha, who had recorded the statement of the injury/Ex.P4 of the accused have not stated anything regarding consumption of alcohol by the deceased. Chemical report under Exs.P9 and P10 were marked and therefore, the trial Court has rightly come to the conclusion that the suggestive case of the defence is that he had consumed alcohol and fell down, cannot be accepted. The reasoning given by the trial Court does not suffer from any irregularity as the same is based upon medical evidence of P.W.11 and Ex.P6/postmortem certificate.

11. Yet another point has been raised by the learned counsel for the appellant is that in view of the ditch nearby the house, there was a regularisation of the water sewage and he sustained injuries on the stone. Based upon the investigation officer evidence and also the evidence of P.W.1, P.W.2 and



P.W.3, the trial Court has rightly rejected the contention of the appellant.

11(a). It is only due to the sudden quarrel that was developed on the spot namely scene of the crime as spoken to by P.W.1 to P.W.3, goes to show that the said action of the accused is without any intention.

12. From the medical evidence of P.W.11/Dr.Kavitha who had issued Ex.P4/Accident Register would depose that the deceased was admitted in the hospital for treatment, he having been brought on ambulance that a known man hit by his hands and found abrasion on the right hand and contusion in the forehead. In the postmortem certificate/Ex.P6, it is mentioned as "A cold symmetrical moderately built body of a male lies on its back, at mortuary, (i) sustained wound of size 6cm length noted in right front partial region of skull (ii) tiny abrasion noted in right wrist, forearm, right knee, ear, nose, mouth and the deceased would have died out of shock because of the injuries sustained and thus, I find that no weapon has been used on any vital organs. The main question for determination is to what offence has been committed by the accused.

13. The learned counsel for the appellant would contend that the provision of Section 304(i) do not stand attracted. Further, the learned counsel for the appellant relied upon the decision of the Hon'ble Supreme Court reported in 1982 CrL LJ 1870 (Dnyaneshwar Dagdoba Hivrekar Vs. The State of Maharashtra) and (ii) 2009 (11) SCC 371 in Shaikh Karimullah Vs. State of Andhra Pradesh and also relied upon the decision in CrL.A.(MD) No.428 of 2008 reported in MANU/TN/0381/2019.

14. On perusal of Ex.P18, it is noted that in the final opinion P.W.12/Dr.Kalyani, have expressed that the deceased would have died out of shock and because of the injuries sustained. Based upon the medical evidence of P.W.11/Dr.Kavitha, who had issued Ex.P4/Accident Register and post-mortem certificate/Ex.P6 issued by P.W.12 Dr./Kalyani, the trial Court has come to the conclusion that due to the sudden quarrel, the incident has taken place and further, based upon the evidence of Investigation officer that during the relevant point of time, the entire sewage connection, there was no use of stone in the respective place and thereby, the deceased was pushed over by the accused and thereby, he fell down on the drainage canal and sustained injuries in the head and based upon the same, out of shock, at the age of 70 years, the deceased Ramasamy had died, I find that the conviction under Section 304(ii) is not sustainable.



15. From the medical evidence of the Doctors and also the occurrence witness, I am inclined to accept the contention for the reason that in order to attract the provision of Section 304(i), two circumstances has to be explained by the prosecution.

(a) If, the act by which, the death is caused, is done with an intention of causing death or

(b) by causing such bodily injury as it is likely to cause death.

16(a). Admittedly, in this case, the act of the accused was not done with the intention of causing death. Therefore, the first clause referred to above does not exist the instant case.

16(b). For the applicability of the second clause, I am of the considered view that it is necessary, voluminous injury was intended to be inflicted and the same has inflicted was sufficient in the ordinary course of nature to cause death. The purported eye witness stated that use of hand and there is pull and push between the parties. The deceased was aged about 70 years, the accused said to have given a fist blow on the deceased and he fell down during the pull and push between the parties.

16(c). Therefore, there is no premeditation for committing murder and as admittedly, the accused has not used any deadly weapon. Therefore, taking into entirety of the circumstances, as seen from witnesses, this Court finds that the charge under Section 302 of IPC as modified into 304(ii) of IPC by the lower Court, does call for any interference.

17. Admittedly, due to the heated moments with regard to the alleged nature of dispute between the parties, both of them are grappling each other and no weapon was used. Furthermore, in the set of evidence adduced before the Sessions Court, it could not be concluded that or stated the accused would have had the knowledge that by pushing the deceased, it is likely to result in his death, appears to be preposterous.

18. At the most, the accused would have had the knowledge that by engaging in a scuffle with the deceased and pushing him, it may cause hurt to the deceased. In the instant case, the accused pushed the deceased and he fell in the ditch and sustained injuries, as could been seen from the postmortem certificate and therefore, I find that the conviction and sentence passed under Section 304(ii) of IPC is not sustainable



and the accused can at the most be convicted only under Section 323 of IPC. Accordingly, the conviction under Section 304(ii) of IPC is modified under Section 324 of IPC.

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19. In these circumstances, the conviction and sentence passed for the offence under Section 304(ii) of IPC is set aside and modified under Section 324 of IPC. It is represented that the accused was in jail from 22.04.2013 to 25.06.2013 first spell and 03.02.2016 to 11.03.2016 second spell.

20. In the result, while confirming the conviction for the offence under Section 324 of IPC and convicted the accused and sentence to undergo one year rigorous imprisonment. Bail bonds, if any, executed by the appellant/accused shall be kept intact and the trial Court is directed to secure the presence of appellant/accused and commit him to the prison to serve the rest of the sentence imposed on him. The period of imprisonment already undergone shall be set off.

21. The criminal appeal is partly allowed to the extent indicated above.

SD/-

ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

AT

To

1. The Judicial Magistrate,
Gobichettipalayam.

2. The III Additional District and
Sessions Judge,
Gobichettipalayam.

3. The Inspector of Police,
Gobichettipalayam Police Station,
Gobichettipalayam,
Erode District.

4. The Superintendent,
Central Prison, Coimbatore.



5.The Public Prosecutor,
High Court of Madras.

Copy
The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.M.R.Kuyilan, Advocate Sr.57578

Crl.A.No.204 of 2016

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