



BAIL SLIP

The Appellant/Accused namely, Periyasamy(A.1)S/o.Rayar, was directed to be released on bail as per order of this court dated 13/11/2018 in CRL.Mp.No.10571/2018 in Crl.A.No.477/2018 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2021
DELIVERED ON : 21.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.477 of 2018

Periyasamy ... Appellant
Vs.

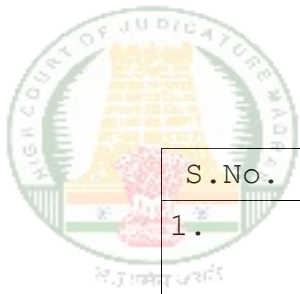
State Rep. by
The Inspector of Police,
Irumbulikuritchi Police Station,
Ariyalur District. (Cr.No.41/2016) ... Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973 against the judgment and order dated 18.06.2018 of the Principal District and Sessions Judge, Ariyalur in S.C.No.74/2016.

For Appellant : Mr.K.Gandhikumar
For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor

J U D G M E N T
[Delivered by R.HEMALATHA, J.]

The present appeal is against the judgment and order of the Principal District and Sessions Judge, Ariyalur in S.C.No.74 of 2016, on 18.06.2018, in which the present appellant was convicted and sentenced as detailed hereunder :



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S.No.	Conviction	Sentence
1.	U/s.326 of IPC U/s.302 of IPC	5 years rigorous imprisonment and a fine of Rs.3,000/- in default, to undergo simple imprisonment for six months. Life imprisonment and a fine of Rs.3,000/- in default, to undergo simple imprisonment for six months.

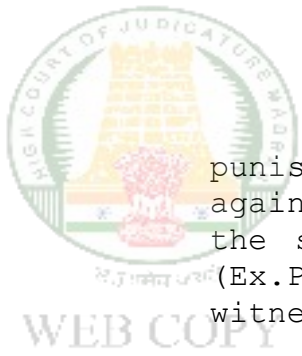
The learned Sessions Judge further directed that the sentences shall run concurrently.

2. The case of the prosecution in nutshell is as follows:

a) Rayar (deceased) and his wife Pounammal (P.W.3) are residents of Keezhamaaligai Village, Senthurai Taluk, Ariyalur District. Periyasamy, the appellant, Rajangam (P.W.2) and Kamaraj (P.W.8) are their sons. Kalaiselvi (P.W.1) is the wife of Rajangam (P.W.2). The family properties were partitioned by the victim after retaining 50 cents of land for himself and his wife. There was dispute over partition between the appellant and his wife on one side and the deceased and his other two sons P.W.2 and P.W.8 on the other. On 17.02.2016 at about 07.00 a.m. when the deceased was brushing his teeth outside his house, the appellant and his wife Rajakumari [A2 in the Sessions case and who was acquitted by the trial Court] picked up a quarrel with the deceased Rayar. The verbal duel ended up in violence and the appellant armed with a crow-bar (M.O.2) assaulted his own father causing serious injuries to him. P.W.1 who rushed to the rescue of her father-in-law was also attacked by the appellant with the crow-bar. P.W.1 swooned and fell down Rajangam (P.W.2) and Pounammal (P.W.3) also witnessed the incident.

b) Both Rayar and Kalaiselvi (P.W.1) were rushed to Government Hospital, Jayamkondan. Dr.K.Rajarajan (P.W.16) examined P.W.1 and the deceased Rayar and gave first aid to them and referred them to Government Medical College Hospital, Thanjavur, for further treatment. The copies of Accident Registers for Kalaiselvi and Rayar were marked as Ex.P13 and Ex.P14 respectively.

c) Thiru.Rajaraman (P.W.21), Special Sub-Inspector of Police, Irumbulikulitchi Police Station, went to Government Hospital, Jayamkondan, and recorded the statement (Ex.P1) of P.W.1 and registered FIR (Ex.P17) in Crime No.41/2016 for the offences



punishable under Sections 294(b), 323, 324 and 506(ii) IPC against the appellant and his wife Rajakumari. He then went to the scene of occurrence and prepared an Observation Mahazar (Ex.P3) and a rough sketch (Ex.P18) in the presence of the witnesses Anbuselvan (P.W.10) and Seeman (not examined).

d) Kalaiselvi (P.W.1) was discharged from the hospital on 13.04.2016 and she was treated for a humerus fracture in her left arm and the wound certificate (Ex.P15) shows that her injuries were grievous in nature. It has also been mentioned in the Accident Register (Ex.P13) that P.W.1 sustained grievous injuries. However, Rayar succumbed to injuries on 24.02.2016.

e) Thiru.Bharathidasan (P.W.22), the Inspector of Police, Udaiyarpalayam Police Station, took up investigation and altered the sections of law to 294(b), 323, 324, 506 (ii) and 302 IPC and sent the alteration report (Ex.P16) to Court through Thirisangu (P.W.18) Grade-II Constable attached to Irumbulikuritchi Police Station. He conducted an inquest (Ex.P19) on the body of the deceased in the presence of Panchayatdhars and thereafter, sent the body for postmortem.

f) Thiru.Susilkumar (P.W.19), Grade - II Constable, identified the body of the deceased to Dr.Tamilmani (P.W.15) who conducted autopsy on the body of the deceased. The postmortem report (Ex.P11) shows that the victim sustained the following injuries :

I.A 'U' shaped surgical suture wound of size 28 cm x 1 cm x bone depth seen over right frontal, temporal and parietal region.

II.A lacerated sutured wound of size 7 cm x 1 cm x bone depth noted over left temporal and parietal region.

III.Laceration of size 3 x 1 x cm over right heel,

IV.Contusion of size 6 x 4 cm seen over right temporal and outer aspect of right eye.

g) He then sent the visceral organs to Forensic Lab, Thiruchirappalli, for examination. As per the evidence of Arunagiri (P.W.13) and the toxicology report (Ex.P8), no poison was detected in the visceral organs. Thereafter, P.W.15 opined that the deceased 'would appear to have died of complications of head injuries due to injuries over vital organ of brain'. The postmortem certificate and the final opinion were marked as Ex.P11 and Ex.P12 respectively. P.W.22 recovered a blood stained white dhoti (M.O.1) worn by the deceased under Form 95.



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h) Subsequently, on 25.02.2016, P.W.22 arrested Rajakumari, the wife of the appellant, and based on her police confessional statement, recovered crow-bar (M.O.2) and Aruval (M.O.3) under the cover of a mahazar Ex.P21 in the presence of the witnesses Parameshwaran (P.W.11), the Village Administrative Officer and his assistant Gopal (P.W.12). He also recovered blood stained clothes (M.O.4 to M.O.7) of the appellant and his wife recovered from Parthasarathy (P.W.9), nephew of appellant's wife Rajakumari under Form 95 (Ex.P22).

i) Tmt. Jaya (P.W.14), Assistant Director, Forensic Science Lab, Trichy, submitted the biological report (Ex.P10) which confirmed the presence of human blood in all the material objects (M.O.1 to M.O.7). After completing the investigation, P.W.22 filed a final report in PRC No.20/2016 before the Judicial Magistrate Jayamkondan. The learned Judicial Magistrate-I, furnished copies of documents to the appellant and his wife (A2) under Section 207 Cr.P.C., and thereafter, committed the case to the Court of sessions.

j) The learned Principal District Sessions Judge, Ariyalur, tried the case after framing charges against both the accused. The charges framed against the appellant are for the offences under Sections 294 (b), 323, 506 (ii) and 302 IPC. When the appellant was questioned with regard to the circumstances appearing in evidence against him under Section 313 Cr.P.C, his answers were a simple denial. However, he filed a written submission in which he has stated that at about 07.00 a.m. on 17.02.2016, when he went with his wife to the land partitioned to him, he had to use the common passage west of his father's house and it was objected to by P.W.1 which led to an altercation. The altercation ended up in P.W.1 assaulting the appellant's wife with an iron rod on her head and when he tried to lift her, his brother (P.W.2) attacked him with another iron rod causing head injuries. P.W.2 also tried to assault him again when his deceased father came in between and was injured on his head accidentally. According to the appellant, he and his wife had to take treatment on the same day in Government Hospital, Jayamkondan.

k) The appellant examined Thiru.Rajaraman (D.W.1), Special Sub-Inspector of Police, Irumbulikulritchi Police Station, and Dr.Rajarajan (D.W.2), Government Hospital, Jayamkondan. Strangely, these two defence witnesses were already examined on the side of prosecution also as P.W.21 and P.W.16 and were also cross examined by the defence. The manner in which two prosecution witnesses have been summoned as defence witnesses



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too, is not only unheard of but also totally contrary to law. Such a serious lapse on the part of the trial Court Judge is viewed with disfavour and is deprecated by this Court. However, no prejudice is caused to either the prosecution or the accused by this irregularity. Rajaraman (P.W.21) deposed as D.W.1 that he registered First Information Report (Ex.D2) in Crime No.42/2016 based on the statement (Ex.D1) given by Rajakumari (A2) and closed the same as 'mistake of fact' after investigation.

1) Dr.Rajarajan (P.W.16) as D.W.2 had deposed that he gave treatment to the first appellant and also his wife Rajakumari. According to him, both of them bore head injuries which were not superficial and that they were treated as inpatients. The Accident Registers were marked as Ex.D3 and Ex.D4. However, no record for their being treated as inpatients has been adduced.

3. Mr.K.Gandhikumar, learned counsel appearing for the appellant contended that

a. all the eyewitness to the occurrence are close relatives and also had contradicted each other in the depositions.

b. the independent eyewitness P.W.4 to P.W.7 turned hostile to the prosecution.

c. the learned trial Court Judge had overlooked the fact that injuries were sustained by both the appellant and his wife which were grievous in nature.

4. Per contra, Mr.Babu Muthumeeran, learned Additional Public Prosecutor argued that the prosecution had established the guilt of the appellant beyond all reasonable doubts through oral and documentary evidence.

5. This is a case where jealousy and resentment amongst the siblings on distribution of the property by way of partition went out of hand. From the facts of the case, it can be deciphered that the appellant was nurturing a grouse against his own younger brother Kamaraj (P.W.8) on the property apportioned to the latter and even approached a Civil Court where he could not succeed in the litigation.

6. Another revelation, while analysing the facts of the case, is that the deceased father of the appellant had plans of giving a share of his property which he had retained, to the children of the other two brothers, namely Rajangam (P.W.2) and Kamaraj (P.W.8) which sparked the anger and ended up in the tragedy. The deceased Rayar sustained fatal injuries in the free



for all assault in which not only the victim and his daughter-in-law (P.W.1) sustained injuries but also both the appellant and his wife. In fact, initially the FIR in Crime No.41/2016 registered based on the statement of P.W.1 was for offences under Sections 294(b), 323, 324, 506 (ii) and 302 IPC against the appellant and his wife. Simultaneously, another FIR in Crime No.42/2016 was registered based on the statement of Rajakumari under similar Sections against the deceased Rayar, Kalaiselvi (P.W.1) and Rajangam (P.W.2). Though FIR in Crime No.42/2016 was closed by P.W.16 as mistake of fact it is true that the appellant and his wife were injured as is evidenced by the Accident Registers Ex.D3 and Ex.D4. This fact has been confirmed by P.W.1 also in her deposition. Out of the three eyewitnesses to the occurrence, P.W.1 has claimed that she saw her deceased father-in-law after he was attacked by the appellant and his wife and that when she went to physically lift him she was also attacked by the appellant with the crow-bar (M.O.2). P.W.2, the husband of P.W.1 also corroborated P.W.1 by deposing that only after hearing his father's scream P.W.1 rushed to scene of occurrence and tried to lift his father when she was allegedly attacked by the appellant. P.W.3, the mother of the appellant had deposed that the appellant attacked her husband with a crow-bar (M.O.2) on his head. P.W.4 to P.W.7 who turned hostile have also confirmed the presence of both the appellant and his wife in the scene of occurrence carrying the crow-bar (M.O.2) and Aruval (M.O.3). This portion of their deposition, though they turned hostile, cannot be brushed aside. It is also true that both the deceased and P.W.1 suffered serious injuries in comparison to that suffered by the appellant and his wife. It is also pertinent to mention that the complaint in FIR 42/2016 was closed as per the evidence of P.W.16. P.W.3 in fact has also revealed that the first appellant and the deceased were not in talking terms for about 30 years and the same was the case with P.W.2 and the first appellant also. Therefore, it is clear that there was a sharp divide in the family with the appellant and his wife on one side and the rest of the family on the other. The animosity only kept growing over the years and ended up in this attack. The deceased, unlike many other fathers, was clear in his thought while partitioning his properties retaining a portion of it for his own use. It can also be seen from the depositions of all the close relatives that all the three sons of the deceased were living separately with their respective families in the properties settled in their favour. They were not living with their father, the deceased. During the course of cross examination it was suggested to prosecution witnesses that in the fight involving a group of persons the possibility of the deceased and P.W.1 getting injured cannot be attributed to the



appellant alone. There is overwhelming evidence of the direct involvement of the appellant and his wife in the attack. Moreover, the appellant and his wife were also injured in the attack. Now, the question which has to be answered by this Court is whether considering the peculiar facts and circumstances of the instant case where there was a family dispute and where there was no intention to murder his own father but at the same time the appellant had knowledge of the serious injury the weapon could cause, whether the conviction of the appellant under Section 302 IPC should be upheld or be converted to one under Section 304 part (II) IPC. Section 304 IPC reads under :

"Section 304 - Punishment for Culpable homicide not amounting to murder. - Whoever commits culpable homicide not amounting to murder shall be punished with 1[imprisonment for life], or imprisonment for either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death".

7. Some of the significant features of this case which are required to be taken into consideration in awarding the appropriate sentence are

1.The incident involved five people, including the deceased, of the same family, out of which four of them were armed with lethal weapons like crow-bar, Aruval and iron rod. In fact the appellant and his wife were on one side and other family members on the other.

2.Initially, there was wordy duel which turned violent. The incident happened at the spur of the moment resulting in injuries to four of them including the deceased.

3.The occurrence had also happened most unexpectedly in a sudden quarrel without pre meditation during the course of which the appellant caused a solitary injury and he cannot be imputed with an intention to cause death or with an intention to cause that particular fatal injury. However, he could be



imputed with the knowledge that he was likely to cause an injury which was likely to cause death.

4. Though the incident took place on 17.02.2016, the deceased remained hospitalized and ultimately died on 24.02.2016.

5. It cannot be said there was enmity leading to the attack but only a serious misunderstanding amongst the family members who were living separately in different houses side by side in the same locality.

Therefore, it is abundantly clear that there was no pre-arranged plan, or any intention to murder his own father. There seems to be a grave and sudden provocation on the part of the appellant and it can be safely concluded that the pent up anger and fury was let out by the appellant though it was not his intention to eliminate his father. Appropriate sentencing is a very vital function and obligation of the Court and therefore it becomes difficult to maintain the conviction of the appellant under Section 302 IPC. Hence, the conviction under Section 302 is set aside and the appellant is convicted under Section 304 (ii) and sentenced to undergo 7 years rigorous imprisonment and pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for six months.

8. A perusal of the records shows that the trial court framed a charge only under Section 323 IPC against the present appellant and the trial was conducted. Only after the case was reserved for judgment, the learned Principal District Judge, Ariyalur, altered the charge to 326 IPC and proceeded to pronounce judgment. The alteration of the charge was not read over and explained to the appellant as per the provisions of Section 216 Cr.P.C. This is another serious lapse on the part of the District and Sessions Judge. No notice / opportunity was given to the accused in this regard. Hence conviction of the appellant under Section 326 IPC is also liable to be set aside. However the appellant is found guilty of the offence under Section 323 IPC and sentenced to undergo rigorous imprisonment for a period of six months and pay a fine of Rs.1,000/- in default, to undergo simple imprisonment for a period of one month. Both the sentences shall run concurrently.

9. In the result,

- i. The appeal is partly allowed.
- ii. The conviction and sentence under Sections 302 and 326 IPC by the Principal District and Sessions Judge are set aside.
- iii. The appellant is convicted for the offence punishable



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under Section 304 part (II) IPC and sentenced to undergo Rigorous Imprisonment for a period of 7 years and pay a fine of Rs.5,000/- in default, to undergo Simple Imprisonment for six months. The appellant is also convicted for the offence under Section 323 IPC and sentenced to undergo Rigorous Imprisonment for a period of six months and pay a fine of Rs.1,000/- in default, to undergo Simple Imprisonment for a period of one month. Both the sentences shall run concurrently.

iv. The appellant shall surrender before the learned Principal District and Sessions Judge, within 15 days from today, failing which, the trial Court shall take steps to secure him for undergoing the sentence.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Judicial Magistrate, Jayankondam.
2. The chief Judicial Magistrate,
Ariyalur (for information)
3. The Public Prosecutor, High Court, Madras.
4. The Inspector of Police,
Irumbulikuritchi Police Station,
Ariyalur District.
5. The District Principal and Sessions Judge,
Ariyalur.
6. The Superintendent,
Central Prison, Ariyalur.
7. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.K.Gandhi, Advocate SR.No.68852

Crl.A.No.477 of 2018

AD(CO)
GN(04/01/2022)