



BAIL SLIP

Mahadevan S/O, Ayyanar Accused No.1 in SC No.107 of 2011 on the file of 1st Additional District and sessions Judge, Tindivanam was enlarged a bail in MP.No.3 of 2014 in CrI A.No.442 of 2014 dated 23.07.2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.08.2021

PRONOUNCED ON : 08.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.A.No.442 of 2014

1.Mahadevan
2.Ayyanar
3.Elumalai

... Appellant/Accused 1,2&4

Vs.

The State of Tamilnadu
represented by Inspector of Police
Aragandanallur Police Station Crime No.126 of 2010
Villupuram District. ... Respondent/Complainant

Prayer: This Criminal Appeal has been filed under Section 374 of Cr.P.C., against the order of conviction passed by the learned I Additional District and Sessions Judge, Tindivanam in S.C.No.107 of 2011, dated 08.08.2011 convicting the first appellant under Section 304(ii) of IPC and imposed a sentence of seven years rigorous imprisonment, second appellant for offence under Section 324 of IPC and imposed sentence of rigorous imprisonment of three months and the third appellant under Section 323 of IPC and imposed the sentence of one month rigorous imprisonment.

For Appellants : Mr.Vivekananthan
for Mr.B.Nambiselvan

For Respondent : Mr.R.Vinoth Raja
Government Advocate (CrI.Side)

JUDGMENT

(The case has been heard through Video Conference)
The convicted accused viz., A1, A2 & A4 are the appellants herein.



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2.This Criminal Appeal has been filed against the order of conviction passed in S.C.No.107 of 2011, by the learned I Additional District and Sessions Judge, Tindivanam, dated 08.08.2014, wherein, the learned Judge has convicted A1 for the offence under Section 304(ii) of IPC and imposed sentence to undergo seven years rigorous imprisonment; convicted A2 for the offence under Section 324 of IPC and imposed sentence to undergo three months rigorous imprisonment; convicted A4 for the offence under Section 323 of IPC and imposed sentence to undergo one month rigorous imprisonment.

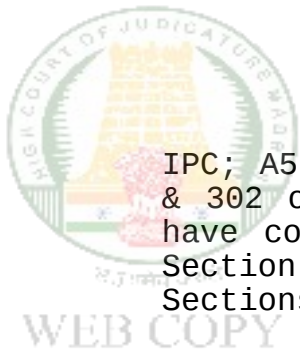
3(a).The case of the prosecution is that Inspector of Police, Aragandanallur Police Station has laid a final report alleging that the deceased Kasinathan, his family members, accused 1 to 5 are the residents of Ottampatu village. The father of the deceased viz., VellayaKounder, A3/Manickam and one Annamalai are brothers. All the three had orally partitioned the site. A3 and his son viz., A2 were enjoying the entire site by using it as a cattle shed and by putting garbage. Whiles, due to misunderstanding among brothers, the deceased asked A2 & A3 to remove the garbage from the site and he wanted to survey the land and lay survey stones for the respective shares.

3(b).On 04.04.2010 the deceased Kasinathan laid a fence for his share of property and A1 to A3 removed the fence, during the evening. At about 8.00 p.m., the deceased returned home and saw the fence are removed and hence, he scolded A3 and his family members for removal of fence.

3(c).A1 to A8 unlawful assembled with deadly weapons and in pursuance of the common object A1 scolded the deceased in filthy language and assaulted him on his head with wooden pestle, A5 assaulted him on his left hip with iron rod, A6 assaulted him with wooden log on his chest and back, A7 assaulted him with wooden log on his chest and thereby caused injuries to him.

4.On seeing the witnesses viz., PW1/Babu, PW2/Sasikala and PW3/Boopathy, who came for rescue, A2 assaulted PW1 with cycle chain on his head, A3 assaulted PW1 with wooden long on his right hand and caused simple injury; A4 assaulted PW2 with wooden log and had caused injury on her right shoulder. A8 pulled the tuft of PW3 and assaulted her with hands and caused simple injury.

5.Hence, A1 alleged to have committed the offence under Sections 148, 294(b) and 302 of IPC; A2 alleged to have committed offence under Sections 148, 324 & 302 of IPC read with Section 149 of IPC; A3 & A4 alleged to have committed offence under Sections 148, 323 & 302 of IPC read with Section 149 of



IPC; A5 alleged to have committed offence under Section 148, 324 & 302 of IPC read with Section 149 of IPC; A6 & A7 alleged to have committed offence under Sections 148, 323 & 302 read with Section 149 of IPC; A8 alleged to have committed offence under Sections 147, 341, 323 & 302 read with Section 149 of IPC.

6. Thereafter, the case was taken up on file as S.C.No.107 of 2011, before the learned I Additional District and Sessions Judge, Tindivanam. After the trial, the learned Sessions Judge has found A1 guilty for the offence under Sections 304(ii) of IPC and sentenced him to undergo seven years rigorous imprisonment; found A2 guilty for the offence under Section 325 of IPC and sentenced him to undergo three months rigorous imprisonment; found A4 guilty for the offence under Section 323 of IPC and sentenced him to undergo one month rigorous imprisonment; all the other accused were acquitted from the respective charges. Aggrieved against the said conviction and sentence, A1, A2 & A4 have preferred the present Criminal Appeal before this Court.

7. Heard the learned counsel for the appellants and the learned Government Advocate (Crl.Side) appearing for the respondent.

8. The case of the prosecution is that the deceased Kasinathan, A3 and one Arunachalam are brothers and they have a common property behind the house of the deceased. A3 along with his family viz., A1 & A2 were using the said land to dump cow-dung. On request of the deceased the said area was cleaned. The deceased Kasinathan said to have fenced the entire area. Whiles, on 04.04.2010 and the said fence was removed by A1 to A3. On account of this, there was a quarrel at 8.00 p.m., A1 had reportedly beat the deceased on his head with wooden pestle and other accused purportedly beat the deceased as well as the witness with cycle chain, wooden log and iron rod.

9. The body of the deceased was in the custody of PW12/Veeran, on information, PW10/Dr.Kumarselvam had conducted post-mortem on the body of the deceased and issued post-mortem certificate, it was marked as Ex.P14, it also corroborates that deceased had suffered injury on his head, his skull has been fractured and the brain has also been injured and the death has occurred only due to the injury caused on his head. Hence, the overt act of A1, has caused the fracture of skull and injury in the brain of the deceased. The final opinion Ex.P15, issued based upon the post-mortem certificate/Ex.P14, in which, it is stated that the deceased has died due to the injury caused to the brain.

10. Thus, this Court from the medical evidence of PW10/Kumarselvam and documentary evidence of Ex.P14/post-mortem



certificate, comes to the conclusion that the deceased died due to homicidal violence.

11. Accordingly to the prosecution, the motive for the crime is that the land dispute. From the cross-examination of PW1 to PW4 and suggestive case projected, the Trial Court has come to the conclusion that both the parties viz., deceased as well as accused both are aggrieved by the act of each other and hence, motive said to have been proved by the prosecution.

12. In support of the charge under Section 302 of IPC, prosecution examined PW1 to PW15. Exs.P1 to P21 were marked and M01 to M010 were also marked. PW1 is the son of the deceased Kasinathan; PW8/Sudha is the Doctor, who has given treatment to PW2 & PW3; whereas PW10/Dr.Kumarselvam has conducted post-mortem; while PW12, PW13 and PW15 are the police witness, deposed regarding discharge of their official duty and receipt of Ex.P1/complaint and collection of materials and arrest of the accused and filing of final report of the investigation.

13. On close scanning and scrutinizing the evidence of prosecution witness, this Court finds that PW1/Babu is the son of deceased Kasinathan. The said Kasinathan's father Vellaya Kounder, A3/Manickam and one Annamalai are brothers. All the accused and witnesses belong to Ottampattu village. The deceased Kasinathan and his family members were having a vacant site behind his house. A3 and his family members were enjoying the property by putting garbage and by using it as a cattle shed. Just prior to the occurrence PW1's father asked A3 to remove garbage from the site. After removal of garbage, on 04.04.2021, PW1's grand father laid fence around his site. A1 to A3 came there and removed the fence during the day time. At about 8.00p.m. P.W.1's father Kasinathan returned home and saw that the fence has been removed. He immediately asked the accused 1 to 3 as to why he had removed the fence. While so, A1 to A7 came with weapons and A1 assaulted deceased Kasinathan with wooden pestle on his head and when PW1/Babu/Complainant went for the rescue, A1/Ayyanar assaulted him with cycle chain on his head, A3 assaulted him with wooden log on his right hand, A4 assaulted PW2/Sasikala with wooden log on her right shoulder, A5 assaulted the deceased with iron rod on the chest, A6 & A7 assaulted the deceased with wooden log on his chest and back, A8 assaulted PW3 with hands by pulling her tuft. While PW1 to PW3 sustained simple injuries in the occurrence and Kasinathan succumbed to the injuries.

14. On a combined reading of the chief and cross-examination of PW1/defacto complainant, it is seen that there is a dispute between the family of the deceased and the accused regarding the usage of 5 cents of land. PW1 claims that the said 5 cents of land belong to his father but in the confession



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statement given by A1 it is stated that there was a joint family vacant site behind the house of the deceased. There was a dispute in usage of the said vacant site. A1 to A3 removed garbage put by them and were waiting to survey the land. In the mean time the deceased has laid the fence, fixing his share in the property and that fence has been removed by the accused.

15.Thus, this Court finds that PW1 has stated that A1 assaulted his father viz, the deceased Kasinathan with wooden pestle on his head. Ex.P1/complaint also corroborates his evidence. The evidence of PW2/Sasikala, PW3/Boopathy, PW4/Subramanian and PW5/Elimalai, also corroborates the evidence of PW1 regarding such injury caused to the deceased by A1 with wooden pestle on his head.

16.In this connection PW10-Kumarselvam has conducted post-mortem on the body of deceased. Ex.P14/post-mortem certificate, issued by PW10/Doctor, also confirms that A1 has caused injury on the deceased head, his skull has been fractured and the brain has also been injured and the death has occurred only due to the injury caused on his head. Hence, due to the overt act of A1, has caused the fracture of skull and injury in the brain of the deceased. He has also given the final opinion under Ex.P15 and Ex.P14/post mortem certificate, is to the effect that the deceased had died due to the injury caused to the brain.

17.The learned Government Advocate (Cr1.Side) would contend that

(i)the rough sketch of allotted property and the "X" marked portion as a scene of occurrence is the scene of the crime which is in front of the house of the deceased/Kasinathan.

(ii)the scene of the crime is clearly projected by the prosecution has been duly corroborated by PW1 to PW5.

(iii)As per the the evidence of PW1 to PW5 with regard to the use of the weapon by A1, A2 and A4 on the body of the deceased, was duly corroborated by the evidence of PW1, who also sustained injury in the very same occurrence. Furthermore, in the said attack as spoken to by PW2 to PW5 was duly corroborated by Medical Evidence of the Doctor as could be seen from Ex.P14/post mortum certificate and Ex.P15/final opinion issued by G.H.Thirukoilur to deceased Kasinathan.

18.Thus, this Court finds that the prosecution has let in positive evidence as to the fact that A1 assaulted on the head of the deceased and thereby, the deceased has sustained injury on his head and his skull has been fractured and the brain has also been injured, which resulted in death of Kasinathan and thus, this Court finds that the findings rendered by the Trial Court that due to the overt act of A1, which resulted in the death of the deceased Kasinathan and the presence of PW1 to PW3



can not doubted and such a finding rendered by the learned Sessions Judge does not suffer from any irregularity or illegality, warranting interference.

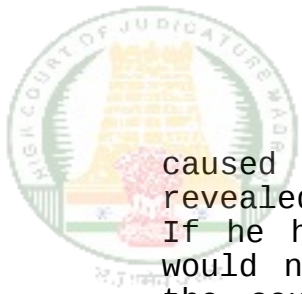
19. The learned Sessions Judge has also taken note of the answer elicited in the cross examination, had come to the conclusion that there is a material contradiction with regard to the alleged overt act of A5 & A6 and accordingly, acquitted A5 & A6 and this Court finds that in view of the specific evidence of PW1, which is duly corroborated by the evidence of PW2/Sasikala, PW3/Boopathy, PW4/Subramanian, and also the medical evidence of PW10/Kumarselvam, coupled with Ex.P14/post-mortem certificate, the finding rendered by the Sessions Court that due to the blow given on the head of the deceased by A1, the deceased/Kasinathan had sustained injury on his head and his skull has been fractured and the brain has also been injured, resulted in death is just and proper. The such finding is hereby confirmed.

20. The motive for the crime is that of land dispute.

21. It is seen from the cross examination of PW1 to PW4 that the occurrence has commenced due to the land dispute. One party claims the land as joint family property while the other, who are none other than two of his maternal grand father, A1 to A3 are share holders. It is the specific claim that a "specific portion" belong to them. When the parties were waiting for the measuring land, the father of PW1 has put up the fence, so it was removed by the accused. And therefore, the removal of the fencing by the accused could not amount to an unfair act and thus, both the parties have their own claim as against the land in dispute.

22. It is just ten minutes before the occurrence, there was a wordy quarrel between, the deceased and A1 to A3, as admitted during the cross examination of PW1, PW3 coupled with the investigation officer PW18. Such a quarrel came to an end and 10 minutes thereafter only the accused seems to have come out of the house and hence, I find that A1 had no such intention to cause a grave injury. But, at the same time the accused knows that the wooden pestle if assaulted on the head would cause such a injury that it would be imminently dangerous and in all probability it would cause death. So the offender knows that it is imminently dangerous in using a weapon like wooden pestle, and if assaulted on the head in all probability it would cause the death. Hence the act of the accused would be covered under Section 300 fourthly.

23. Thus, this Court finds that the prior to the occurrence, there was a wordy quarrel for 10 minutes regarding the land dispute and finally it has resulted in a sudden fight and in a heat of passion and upon a sudden quarrel, A1 has



caused such injury on head of deceased. Further it would be revealed from the conduct of A1 that there is no premeditation. If he had premeditation to cause the death of the deceased he would not have quarrelled for 10 minutes. As soon as he heard the sound of the deceased, first accused would have attacked him. So considering the relationship of the accused and the deceased, the land dispute, the wordy quarrel which went on for 10 minutes, the weapon used and the single blow that he has given on the head of the deceased all these acts go to show that the act of A1 would be covered under 300 clause 4 of IPC and under exception of 4 of Section 300 of IPC. Accordingly, the Trial Court has convicted A1 under Section 304(ii) of IPC.

24(a).The learned counsel for the appellant would contend that there is a material contradiction. This Court has considered such contention by the learned counsel for the appellant, however considering the clear and cogent evidence of PW1 & PW2 coupled with the medical evidence of PW10, this Court finds that the act of the accused in attacking the deceased with wooden pestle on the fore head, which has been shown as cause of injury, I find that same is sufficient enough to hold him guilty for the offence under Section 304(ii) IPC.

24(b).Accordingly the finding rendered by the learned Sessions Judge that A1 is found guilty for the offence under Section 304(ii) of IPC is hereby confirmed.

25.As to the injury caused to PW1 based upon the version of PW1, PW2 & PW3 regarding the overt act of A2, PW8/Dr.Sudha, who had examined PW1/Babu and had issued Ex.P8, in which she found injury on the head, however, the overt act of A3 was negatived by the learned Sessions Judge itself.

26.In respect of injury caused to PW2 as per the prosecution she was assaulted by A4 with wooden lag on her right shoulder, the evidence of PW2 is duly corroborated by PW1, doctor evidence also duly corroborated as per Ex.P13. Therefore, the Trial Court has rightly come to the conclusion that A4 has caused simple injury to PW2 with wooden log on his right shoulder accordingly convicted for the offence under Section 323 IPC.

27.Taking into consideration the plea of the quantum of sentence, I find that the accused had knowledge but however due to the sudden quarrel on the spot the act was committed by A1 on the head of the deceased. Accordingly 7 years rigorous imprisonment is reduced to four years and A2 is found guilty of for the offence under Section 324 of IPC, however, his sentence is modified to Rs.3,000/- fine alone so also A4 accused who has found guilty of 323 of IPC and convicted under same section however, the sentence is modified into Rs.2,000/- fine.



28. In the result

(i) this Criminal Appeal is partly allowed;

(ii) Sentence imposed on A1 for the offence under Section 304(ii) of IPC is reduced to four years rigorous imprisonment from seven imprisonment;

(iii) Sentence imposed on A2 for the offence under Section 324 of IPC is modified only to pay a fine of Rs.3,000/- alone.

(iv) Sentence imposed on A4 for the offence under Section 323 of IPC is modified only to pay a fine of Rs.2,000/- alone.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To:

1. The I Additional District and Sessions Judge, Tindivanam.

2. The Inspector of Police
Aragandanallur Police Station,
Villupuram District.

3. Public Prosecutor,
High Court, Madras.

4. The Superintendent,
Central Prison, Cuddalore.

+1CC to M/s.B.Nambiselvan, Advocate, SR.No. 53482

Cr1.A.No.442 of 2014

SS(CO)
B.VC (01/11/2021)