



Bail Slip

That the Appellant herein/Accused No.1. Viz., Haridoss @ Hariraj, S/o.Sadaya Goundar, was directed to be released on bail as per order of this Court dated 11.12.2019 made in Crl.M.P.No.13229 of 2019 in Crl.A.No.611 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.611 of 2019

Haridoss @ Hariraj

... Appellant/Accused No.1

Versus

The state represented by
The Inspector of Police,
Nallipalayam Police Station,
Namakkal District.
(Crime No.69 of 2014 of Erumapatty PS)

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) Cr.P.C., seeking to allow this appeal by setting aside the judgment dated 03.06.2019 in S.C.No.87 of 2015 on the file of the Principal Sessions Judge, Namakkal.

For Appellant : Mr.B.Vasudevan

For R1 & R2 : Mr.R.Suryaprakash
Government Advocate

J U D G M E N T

This Criminal Appeal has been filed seeking to allow this appeal by setting aside the judgment dated 03.06.2019 in S.C.No.87 of 2015 on the file of the Principal Sessions Judge, Namakkal.

2. The respondent police registered the case against the appellant and yet another accused in Crime No.69 of 2014 for the



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offence under section 302 and under section 324 IPC. After investigation they laid a charge sheet before the Judicial Magistrate-I, Namakkal. The learned Magistrate taken the charge sheet on file in PRC No.16 of 2014. After completing the formalities since the offence exclusively triable by the Court of Session, the case was committed to the Principal Sessions Judge, Namakkal. The learned Principal Sessions Judge, Namakkal taken the case on file in S.C.No.87 of 2015 and framed the charge against the appellant and A2 for the offence punishable under section 302 IPC and against A2, charge framed for the offence under Sections 324 and 302 IPC.

3. After framing the charges, during the trial in order to prove the case of the prosecution on the side of the prosecution, as many as 11 witnesses were examined as P.W.1 to 11 and 22 documents were marked as Exp.P1 to 22, besides 4 material objects were exhibited as MO1 to MO4. After completing the examination of the prosecution witnesses incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant and A2 by questioning under Section 313 Cr.P.C., they denied the same as false and pleaded not guilty. Subsequently on the side of the defence, one witness was examined as D.W.1 and no exhibit was marked.

4. After completing the trial and hearing of the arguments advanced on either side, the learned Sessions Judge not found guilt of A2 for offence punishable u/s.302 IPC and also not found guilt of appellant for the offence punishable under section 302 IPC. However found guilty for the offence under section 304(ii) against A1/present appellant. Since A-2 is found not guilty for offence punishable u/s.302 IPC he was acquitted from the charge for offence under Section 302 IPC and A-2 was only convicted for the offence under Section 324 IPC. The appellant was convicted and sentenced to undergo 10 years RI and pay fine of Rs.10,000/- in default to undergo 2 years and 6 months for the offence under section 304 (ii) IPC and A2 is convicted and sentenced to undergo R.I of 2 months; to pay fine of Rs.1,000/- in default S.I for 2 weeks.

5. Challenging the above said Judgment of conviction and sentence, A2 has not filed any appeal. However A1 has filed the present appeal against the judgement of conviction and sentence for the offence under section 304(ii) IPC.

6. The learned counsel for the appellant would submit that there was no previous motive and it is due to sudden provocation and wordy quarrel between A-1, A-2 and the deceased and P.W.1, the occurrence took place. Eventhough, the learned Sessions Judge found that the appellant has not committed the offence punishable under section 302 IPC, he found that due to sudden



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provocation the appellant attacked the deceased with wooden reeper and though the deceased died on the way to hospital, the appellant was convicted under section 304 (ii) IPC. But it is only a quarrel between the relatives regarding the land dispute and there is no previous motive. On 06.03.2014 at 6 o'clock there was a quarrel between one Rangaraj and A2, who are the sons of A1 with regard to partition of their lands. When the deceased pacified them, at that time, A2 beaten the deceased with hands. On the same day, at 9 o'clock both the deceased and his son went for questioning A2 as to why he assaulted his father/deceased. Even without any motive, on sudden provocation, even as per the case of the prosecution, the appellant and his son have taken deadly weapons and with a view of taking revenge, to take away the life of the deceased, due to wordy quarrel and on sudden provocation, they took the wooden reeper which was lying in the nearby the place of occurrence and attacked him. Though the learned Sessions Judge rightly acquitted the appellant for offence punishable under 302 IPC, but convicted the appellant u/s. 304(ii) IPC. But failed to consider the facts and awarded a maximum sentence of 10 years which warrants interference of this Court. However, he would submit that the presence of P.W.2 and 3 were highly doubtful. In order to strengthen the case of the prosecution, P.Ws2 and 3 are induced to give evidence by the prosecution. But in this case, the weapon is not a deadly weapon and there is no previous motive and not preplanned murder. Unfortunately when all of a sudden, due to wordy quarrel and sudden provocation the appellant and A-2 took reeper stick, assault the deceased. The deceased is the aggressor. Unfortunately the stick fallen on the head of the deceased and he died. Though the deceased was taken by one of the sons of the deceased to the hospital, he was not examined by the prosecution and even by the Investigating Officer. Therefore, considering the nature of the situation, the sentence awarded against the appellant may be modified.

7. Heard the learned Government Advocate, who would submit that P.W.1 is the injured witness, P.W.2 and P.W.3 are friends of P.W.1. All are present at that time of occurrence. Even in the complaint itself, the presence of PW2 and PW3 were mentioned. The evidence of PW1 injured witness was corroborated by other two eye witnesses PW2 and PW3.

8. Even assuming that P.W.2 and P.W.3 were not present at the scene of occurrence, only injured witness was present, he is none other than son of the deceased. Further, A2 assaulted the deceased and P.W.1. Therefore, though A2 attacked the deceased and also P.W.1, A2 was acquitted for the offence punishable under section 302 IPC and convicted under section 324 IPC but he has not challenged the same. Therefore, presence of A1 is not challenged anywhere and therefore P.W.1 is not only an injured witness, but he is also an eye witness. P.W.1 has clearly spoken



about the overt-act attributed against the appellant. So the involvement of the appellant has been proved by the prosecution with cogent evidence. There is no reason to discard the evidence of P.W.1. The evidence of P.W.1 was corroborated by the evidence of P.Ws.2 and 3 and they have also clearly deposed that at the time of occurrence, they were present with P.W.1 and deceased. At that time, the appellant and his son indulged in wordy quarrel and they attacked the deceased as well as P.W.1 and the doctor evidence also clearly shows that they were immediately brought to the hospital. Even before reaching the hospital, he was declared as dead. Therefore the attack of the appellant on the head of the deceased was with such a force. However the trial Court found that there is no previous intimidation. There is no prior motive or enmity. Therefore, simply convicted the appellant only for the offence under Section 304(ii) IPC, not for offence under Section 302 IPC. The doctor one who given the postmortem certificate, clearly proved that deceased died due to injury sustained on the head and the appellant one who caused the injuries to the deceased and due to head injury the deceased died and the place chosen by the appellant is very vital. He is having knowledge that if he sustained injury on head by his attack, it would certainly cause death. Therefore, the learned Sessions Judge rightly convicted though not for the offence punishable under section 302 IPC but convicted for the offence punishable under section 304(ii) IPC and extended the maximum punishment of 10 years and there is no reason to interfere with the judgement of the learned Sessions Judge and there is no merit in the appeal and the appeal is liable to be dismissed.

9. Heard both sides and perused the entire materials on record.

10. The case of the prosecution is that on 06.03.2014 at 6.p.m., there was quarrel between one Rangaraj and A2 who are the sons of A1 with regard to partition of their lands. When the deceased pacified them, A2 beat the deceased with hands. On the same day, at 9 p.m., since the lands of the deceased is near the house of the accused/A2, the deceased and his son questioned A2 as to why he assaulted his father as well as when the deceased questioned A2 that why you kept your "Thattupore" in the common place, at that time, A1 and A2 beat the deceased with wooden reeper on the center of his head and due to which, the deceased sustained head injury and died on the spot. When the same was prevented by P.W.1, the accused assaulted P.W.1 with the same wooden reeper on his left elbow and he also sustained injury. Hence, the complaint.

11. The appellate Court is a fact finding Court. It has to re-appreciate the evidence for giving independent finding for which this Court has gone through the entire materials on record in this case.



12. The charge framed against the appellant is for offence punishable under section 302 IPC and in order to substantiate the charge, prosecution examined as many as 11 witnesses out of which, P.W.1 is also injured witness and he was present at the time of occurrence. A2 attacked P.W.1, therefore he sustained injury. Wound certificate Ex.P.14 clearly proved that P.W.1 sustained injury and wound certificate (in A.R copy) is marked as Ex.P.14. Regarding, the cause of death of the deceased is concerned, on the date of occurrence on 06.03.2014 as per the complaint, at about 6 o'clock, there was a wordy quarrel between the A-2 and one Rengaraj. Subsequently at about 9 o'clock, the deceased and his son went to appellant's house for questioning about the incident. At that time, due to sudden provocation there was a quarrel between both parties i.e., the appellant and his son and the deceased and his son. Due to wordy quarrel, the appellant and his son suddenly took the wooden reeper and attacked on the head of the deceased and his son. In the evidence of P.W.1/the injured witness, it has been clearly stated that the appellant is the one who caused injury to his father. From the evidence of doctor P.W.8 and Ex.P.12 copy of the Postmortem certificate, it is clearly shown that the deceased sustained head injury and due to head injury he died, even before admitting in the hospital. As per the prosecution, P.Ws.2 and 3 are eye witnesses. They are friends of P.W.1 and even in the complaint itself, it is stated that P.Ws.1, 2 and 3 were present in the place of occurrence along with the deceased. Therefore, P.Ws.2 and 3 also corroborated the evidence of P.W.1 and that reeper wood was used by the appellant was also recovered by the prosecution and it was marked as M.O.2 and the sample sand with blood stained and without blood stained also collected and sent it to forensic lab. In this case, P.Ws.1 to 3 are eye witnesses and they have clearly spoken about the occurrence and the complaint also given on the same day and the injured also admitted in the hospital on the same day. The AR copy of the deceased was marked as Ex.P.12, from which it is clearly shown that the alleged assault made by known person with wooden stick and the occurrence had taken place at about 9 p.m., and he was brought to the hospital at 10.45 and entry was made at about 10.45 pm., It shows that the deceased brought dead. The postmortem report is marked as Ex.P.10. A.R. copy of deceased was marked as Ex.P.12 wherein, it was also clearly mentioned that due to the injuries sustained, Durairaj died. Also the doctor has given the opinion that due to shock and Haemorrhage because of head injury, the deceased died soon after sustained injury.

13. Therefore, a combined reading of the evidence of P.Ws.1 to 3 and Ex.P.12 to 14, it is apparent that the deceased died due to head injury and also he died even though not on the spot, but immediately after taking him from the spot before reaching the



hospital. Hence P.W.1 who is the injured witness and whose presence in the scene of occurrence, cannot be doubted. The prosecution has proved the case beyond all reasonable doubt through the eye witnesses and also the medical evidence. The trial Court has come to the conclusion that since there was no prior enmity or motive. Even the motive as alleged by the prosecution it is on the same day at about 6 o'clock by which time, quarrel occurred between the two sides. The occurrence has taken place again on the same day at about 9 o'clock. The witnesses also did not say that the appellant carried weapon even from the prior to start the quarrels. The father of P.W.1 attempted to pacify the quarrel and for which, the accused/A2 assaulted the father and asked who are you to interfere in this matter. Then at about 9 p.m., P.W.1 and his brother, friends P.Ws.2 and 3 went to the field, which is situated at 1 km from his house. At that time both the appellant and his son were in their field, which is situated nearby the field of P.W.1. At the time, P.W.1 questioned the son of the appellant about assault made by him against his father for which, the son of the appellant asked as to why your father had interfered with their problem among their brothers. At that time, the father of P.W.1 asked the son of the appellant why you are keeping "Thattupore" in the common place for which the son of the appellant told that it is not your land at all and the lands belongs to me. At that time, the paternal grand father of P.W.1 assaulted the father of P.W.1, with wooden reeper on his center head. Due to which his father sustained head injury on the head. The son of the appellant assaulted his father and his center head with wooden reeper and his father got fainted. When P.W.1 prevented the same, the son of the appellant assaulted P.W.1 with said wooden reeper below the head and he sustained the injury. Therefore, P.W.1 has not stated anything about that they got previous motive or enmity or there was a preplan to take away the life of the deceased. Therefore, the circumstances report shows that due to wordy quarrel between two families, at the time of date of occurrence on 06.03.2014 at 6 p.m., there was a quarrel between A2 and some other persons, the father/deceased of P.W.1 pacified the problem. Subsequently also it is not the case of P.W.1 that they went to make a quarrel or attack them. Even they went to the field at that time, they met each other in their fields and also their lands are adjacent. At that time, P.W.1 and the deceased questioned about the incident took place at about 6 p.m., and once again they developed the quarrel. During the quarrel, with sudden provocation, they took the wooden reeper and attacked. Since the place chosen by the appellant is vital part, the trial Court rightly come to the conclusion that the appellant has not committed offence punishable under section 302 IPC. But the learned Sessions Judge considering the place chosen and force used, has rightly convicted the appellant for the offence under section 304 (ii) IPC. Therefore, considering the



facts and circumstances of the case and since there is no prior enmity or motive and it is the only occurrence that had taken place due to sudden quarrel, the attack made due to sudden provocation and the weapons are only lying in the place of occurrence not bought by the accused with pre planned. Therefore, when both are close relatives, due to land dispute, all of a sudden provocation quarrel arose and the occurrence has taken place.

14. Considering the facts and circumstances and relationship of the parties, since there is no previous enmity or preplan to commit such an offence, this Court finds that the appellant has committed offence under section 304(ii) IPC and thereby, the conviction is confirmed. However, the sentence of imprisonment alone is modified from 10 years to 7 years which will meet the ends of justice.

15. With the above modification, this Criminal Appeal is dismissed. The trial court is directed to take steps to secure the appellant, if he is not undergoing imprisonment, for the remaining period of sentence, as modified above.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Sessions Judge, Namakkal.

2.The Judicial Magistrate No.I,
Namakkal.

3.do Thro' The Chief Judicial Magistrate,
Namakkal.

4.The Inspector of Police,
Nallipalayam Police Station,
Namakkal District.

5.The Superintendent of Central Prison,
Coimbatore.

6.The Director General of Police,
Mylapore, Chennai.



7.The District Collector,
Namakkal.

8.The Public Prosecutor,
High Court of Madras.

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

+1cc to Mr.B.Vasudevan, Advocate, S.R.No.15904

Crl.A.No.611 of 2019

AK-II(CO)
CB(16/07/2021)