



Bail Slip

The 1st Appellant / 1st Accused namely Kumar @ Sasikumar, S/o.Balu was directed to be released on Bail vide order of this Court dated 14.05.2015 made in MP.2 of 2015 in CrI.A.No.14 of 2015.

The 2nd Appellant / 2nd Accused namely Jayakodi, W/o.Kumar @ Sasikumar, was directed to be released on Bail vide order of this Court dated 12.01.2015 made in MP.1 of 2015 in CrI.A.No.14 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.04.2022
PRONOUNCED ON : 11.05.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CrI.A.No.14 of 2015

1.Kumar @ Sasikumar
2.Jayakodi

...Appellants / Accused

Vs.

State, represented by
Inspector of Police,
Chidambaram Taluk Police Station,
Cuddalore District,
(Crime No.191 of 2013)

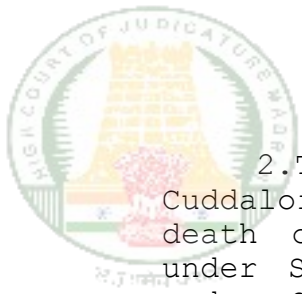
...Respondent / Complainant

PRAYER: The Criminal Appeal has been filed under Section 374 Cr.P.C against the conviction and sentence imposed in S.C.No.210 of 2013 dated 21.11.2014 on the file of the II Additional Sessions Judge, Chidambaram, Cuddalore District.

For Appellants : Mr.R.Sankarasubbu
For Respondent : Mr.J.Subbiah
Govt. Advocate (CrI. Side)

JUDGMENT

The accused in S.C.No.210 of 2013 on the file of the II Additional Sessions Judge, Chidambaram are the appellants herein.

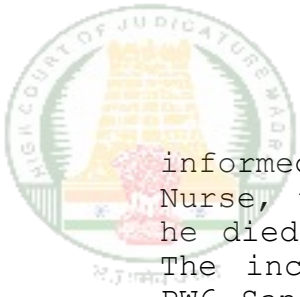


2.The Inspector of Police, Chidambaram Taluk Police Station, Cuddalore District, prosecuted the accused for having caused the death of Shanmugavel by murdering him an offence punishable under Section 302 IPC and thereby, charged the first accused under Sections 294(b), 302 IPC and the second accused under Sections 323 and 302 r/w 34 IPC.

3.In the trial Court, the prosecution examined 14 witnesses PW1 to PW14 and marked 15 documents Ex.P1 to P15 and also filed 3 material objects MOs1 to 3. On the side of the accused, the accused examined two witnesses, DW1 & DW2 and also marked Ex.D1.

4.The trial Court, on considering the oral and documentary evidence, acquitted the First accused for an offence punishable under Sections 294(b) IPC and found guilty of the accused under Sections 304(ii) IPC and found the second accused guilty under 304(ii) r/w.34 IPC and sentenced the first accused to undergo 10 years Rigorous Imprisonment for offence under Section 304(ii) IPC and to pay a fine of Rs.1000/-, in default, to undergo 3 months simple imprisonment and sentenced the second accused to undergo 10 years Rigorous Imprisonment for offence under Section 304(ii) r/w 34 IPC and to pay a fine of Rs.1000/-, in default, to undergo 3 months simple imprisonment and the aforesaid sentences were ordered to run concurrently and the period of sentence already undergone was directed to be set off. Aggrieved by this conviction and sentence, the accused filed this appeal.

5.The prosecution case is that the accused/appellants are husband and wife. PW1 Vasanthi is the wife of the deceased Shanmugavel. The accused and PW1 Vasanthi, deceased Shanmugavel are residing at N.Poolamedu Big Street, Chidambaram Taluk and the accused are residing behind PW1 Vasanthi and the deceased Shanmugavel's garden. They are having a garden with fruit bearing trees. On 11.06.2013 at 7.00 a.m. the accused's goat went into the garden of PW1 and damaged the crops. PW1 drove away the goat and sent it out of the garden. On seeing that, the second accused Jayakodi quarreled with PW1 Vasanthi. On the same day evening, PW1 Vasanthi informed the matter to her husband deceased Shanmugavel. He went to the house of the accused and enquired about the quarrel and he quarreled with the accused. PW2 Kalaivanan, PW3 Ravichandran and one Beema Rao pacified the quarrel. Thereafter, the deceased Shanmugavel returned to his house. On the way of his house, near his cow shed at about 7.30.p.m. the first accused Kumar @ Sasikumar came behind the deceased and assaulted on his head with a wooden stick (MO1). On sustaining injury, the deceased Shanmugavel fell down. The second accused Jayakodi also came along with her husband/first accused and assaulted the deceased Shanmugavel with her hands on his face. The deceased Shanmugavel fainted and fell down. Immediately, PW2 Kalaivanan, PW3 Ravichandran and Beema Rao



informed an Ambulnace and took him to the hospital and the Nurse, who is in the ambulance, tested Shanmugavel and declared he died. Thereafter, he was taken into the Government Hospital. The incident was witnessed by PW4 Dhayanithi, PW5 Sathish and PW6 Sanjai Gandhi and they also came to the place of occurrence and saw the incident. After Shanmugavel was declared as dead, PW1 Vasanthi went to Chidambaram Taluk Police Station at about 23.30 hours and on the same day i.e. on 11.06.2013 at about 23.30 hours, she gave the complaint Ex.P1 to the Sub-Inspector of Police PW12 Selvam.

6.PW12 Selvam Sub-Inspector of Police, received the complaint and registered a case in crime No.191 of 2013 under Sections 341, 294(b), 323, and 302 IPC and the printed FIR is Ex.P13 and the same was forwarded to the Judicial Magistrate and his Higher Officers.

7.On receiving the complaint Ex.P1 and FIR Ex.P13 Muruganandham, Inspector of police (PW13) took the matter for investigation and went to the place of occurrence at about 00.03 hours and inspected the place of occurrence in the presence of witnesses PW7 Balathirumurugan and Jayasankar, prepared an observation mahazer Ex.P2 and rough sketch Ex.P14. Further, he took blood stained soil and ordinary soil (M.o.2 and M.o.3) in a seizer mahazer and the seizer mahazer is Ex.P5 and recorded the statement of witnesses. Thereafter, he went to the Chidambaram Government Hospital and found the body of the deceased Shanmugavel. On 12.06.2013 at about 7.00 a.m. in the presence of witnesses, he conducted inquest enquiry and prepared inquest report Ex.P15, thereafter, gave a requisition letter to the Doctor through Head Constable for conducting postmortem upon the body and recorded the statement of witnesses viz., Kalaivanan PW2, Ravichandran PW3, Beema Rao DW1, Dhayanithi PW4, Sathish PW5, Sanjay Gandhi PW6.

8.Dr.Saravanakumar, PW11 Chidambaram Government Hospital conducted the postmortem upon the deceased body and found the following external injuries

“1.தலையின் பின்பகுதியில் 2 x1 செ.மீ அளவில் ஒரு கிழிந்த காயம் காணப்பட்டது.

2.தலையின் பின்பகுதியில் இரத்தம் கன்னி காணப்பட்டது.”

and opined that due to above injuries, the deceased died and issued postmortem certified Ex.P12.



9.PW13 Muruganandham Inspector of Police, in continuation of investigation, he received information about the accused on 12.06.2013 at about 15.00 p.m. that the accused were standing near Thunisaredu bus stop, thereafter, he went to the place and arrested the accused in the presence of witnesses Panneer Selvam PW8 and Krishnamoorthy PW10. He examined the accused and first accused gave voluntary confession and the admissible portion of the confession is Ex.P9. The signature of witness PW8 Panneer Selvam in the confession is Ex.P4. On the basis of the discloser statement, the Investigating Officer recovered the wooden stick (M.o.1) from a bush behind the Nanjalur Periya Colony School in the presence of the same witnesses and then, forwarded the same to the Judicial Magistrate Court under Form 95. Thereafter, the accused were remanded to judicial custody.

10.Subburayalu PW14 Inspector of police, took up the matter for further investigation and examined the witnesses and obtained forensic report Exs.P6, P7, P8 and examined Forensic Expert Jayanthi PW9 and also examined Dr.Saravanakumar PW11 and recorded their statement. After completing the investigation, filed the final report against the accused.

11.The learned counsel for the appellants/accused submitted that the accused were charged for offences under Sections 294 (b), 302, 323 and 302 r/w 34 IPC. The trial Court acquitted the first accused under Section 294(b) IPC but convicted the accused under Sections 304 (ii) and 304(ii) r/w 34 IPC, since there was no intention on the part of the accused to cause the death of the deceased. Further, contended that the occurrence originated for the reason that the accused's goat entered into the garden of PW1 and the deceased Shanmugavel. In respect of the same, they quarreled each other. There is no other enmity between them. Further, during the occurrence, the first accused gave a blow by using M.O.1 wooden stick on the backside of the deceased head and no other assault was made by the first accused. The second accused assaulted the deceased with her hands on his face. In the postmorem, there is no injuries on his face and only a lacerated injury on his backside and due to the head bone broken, he died. There is no intention on the part of the accused to cause the death of the deceased. During petti quarrel and on a sudden provocation, the accused assaulted with the wooden stick and they had no intention to cause the death of the deceased. The accused are very poor people and some leniency may be shown towards the accused and the sentence imposed by the trial Court may be reduced from 10 years Rigorous Imprisonment. Thus, the learned counsel for the appellants did not challenge the finding of the trial Court under Section 304(ii) IPC and only pleaded to reduce the sentence in this appeal.



12.The learned counsel for the State submitted that the accused were on bail during the time of trial and also during the period of pendency of the appeal. Further contended that since the accused caused the death of the deceased by assaulting him and his family also, lost their support, no leniency is warranted to reduce the sentence and pleaded to confirm the sentence of the trial Court.

13.I have considered the rival submission of the learned counsel for the parties and perused the materials available on record.

14.It is quite clear from the records of the evidence that there was an altercation preceding the incident of murder with regard to the damage of the complainant and the deceased's garden by the accused's goat.

15.The medical evidence of Dr.Saravanakumar PW11 shows that he found a lacerated injury on the deceased Occipital region of head measuring 2 x 1 cm. and opined that the deceased would have died of that head injuries and issued postmortem certificate as ExP12.

16.A perusal of the prosecution witnesses, PW1 Vasanthi wife of the deceased shows that during the occurrence time, the first accused Kumar @ Sasikumar assaulted the deceased with a wooden stick on his head. He made only one assault. The second accused assaulted the deceased with her hands. From her evidence, it is clear that the accused made a single assault with wooden stick on his head and he fell down. The second accused used her hands and made assault on her face but no injuries caused, it is revealed by the medical evidence. PW2 Kalaivanan, PW3 Ravichandran, PW4 Dhayanithi and PW5 Sathish alleged eye witnesses also spoken the same as stated by PW1. From these above evidence, it is noticed that there is no previous enmity between PW1 and the deceased Shanmugavel and the accused. So, it is clear that the altercation preceding the incident of murder is, the trespass of the accused goat into the garden of PW1 and the deceased. The evidences reveal the fact that there was no intention on the part of the accused to kill the deceased. That being the position, the trial Court did not convict the accused under Section 302 IPC but convicted only under Section 304(ii) IPC.



17. On perusal of the prosecution evidences PW1 to PW5, it reveals that the second accused/appellant Jayakodi assaulted the deceased only with her hands on the face of the deceased. There was no injuries found on his face by Dr. Saravanakumar PW11. The only external injury found on the body of the deceased is, lacerated injury on the Occipital region of backside of the head measuring 2 x 1 cm caused by the first accused and opined that due to this injuries, the deceased would have died. So, it is evident that assault made by the second accused with her hands on the deceased face was not caused the death of the deceased.

18. Section 34 IPC embodies the principle of joint liability in the doing of a criminal act, the essence of that liability being the existence of a common intention. Participation in the commission of the offence in furtherance of common intention invites its application. The common intention must be to commit the particular crime, common intention to cause murder cannot be incurred, when there was no enmity with the victim.

19. Under these circumstances, the charge against the second accused under Section 302 r/w 34 IPC will not be made out. Therefore, the second accused could not be held guilty of any offence with the aid of Section 34 IPC. She can be found guilty under Section 323 IPC alone for assaulting the deceased on his face during the quarrel. Therefore, I found that the conviction of the second accused under Section 304(ii) r/w 34 IPC is unsustainable and she is liable to be acquitted under Section 304(ii) r/w 34 IPC but she can be convicted under Section 323 IPC. Therefore, the conviction and sentence of the second accused Jayakodi for the offence under Section 304(ii) r/w 34 IPC is hereby set aside and found guilty only under Section 323 IPC and sentenced her to three months rigorous imprisonment with a fine of Rs.1000/-, failing which, three months simple imprisonment.

20. With regard to the first accused Kumar @ Sasikumar, I confined the finding of the trial Court with regard to the conviction under Section 304(ii) IPC. On considering the fact that the damage of the deceased's garden by the goat of the accused was the reason for the incident of murder and there was no previous enmity and intention on the part of the accused to kill the deceased. The ends of justice would be met, if the first appellant/first accused is sentenced to undergo rigorous imprisonment for a period of three years for an offence punishable under Section 304(ii) IPC.



21. Accordingly, the conviction and sentence imposed on the first appellant by the trial Court is hereby reduced to three years rigorous imprisonment with the fine of Rs.1000/- and the conviction and sentence imposed on the second appellant by the trial Court is hereby reduced to three months rigorous imprisonment with the fine of Rs.1000/-. The sentence undergone by the appellants shall be given remission while calculating the period of imprisonment to be undergone by the appellants/accused.

22. In the result, the criminal appeal is partly allowed and the trial Court is hereby directed to issue warrant to secure the accused to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sms

To

1. The II Additional Sessions Judge,
Chidambaram, Cuddalore District.
2. -do- through The Principal Sessions Judge,
Cuddalore.
3. The Judicial Magistrate No.II,
Chidambaram.
4. -do- through The Chief Judicial magistrate,
Cuddalore.
5. The Inspector of Police,
Chidambaram Taluk Police Station,
Cuddalore District,
(Crime No.191 of 2013)
6. The Superintendent,
Central Prison, Cuddalore.
7. The Superintendent,
Vellore (Womens) Prison,
Vellore.



8. The Public Prosecutor,
High Court, Madras.

Copy to

WEB COPY

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+2ccs to Mr.R.Sankarasubbu, Advocate, S.R.No.31344, 31336

Crl.A.No.14 of 2015

RGN[co]
NSK/01/06/2022