



BAIL SLIP

The Appellant/Accused Namely, .Rajmohan S/o.Govindaraj age 48 was directed to be released on bail by the order of this court dated 07.01.2020 and made in Crl.MP.No.5928/2019 in Crl.A.No.240 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Criminal Appeal No.240 of 2019
and
Crl.M.P.No.1801 of 2022

1.Ramesh
S/o.Kaliyaperumal

2.Rajmohan
S/o.Govindaraj

.. Appellants

Vs.

The State represented by
The Inspector of Police,
Mannargudi Town Police Station,
Mannargudi,
Thiruvarur District.
Crime No.327 of 2017

.. Respondent

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment and order dated 28.03.2019 passed in S.C.No.100 of 2017 on the file of learned Principal District and Sessions Judge, Thiruvarur.

For Appellants : Mr.R.Manickaraj [A1]
Mr.A.Mohamed Ismail
for M/s.Veera Associates [A2]



For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

JUDGMENT

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[Judgment of the Court was delivered by P.N.PRAKASH, J]

This criminal appeal is directed against the judgment and order of conviction and sentence dated 28.03.2019 passed by the learned Principal District and Sessions Judge, Thiruvvarur, in S.C.No.100 of 2017.

2. The prosecution story runs thus:

2.1. Jeyaraman [deceased] is the husband of Mohanambal [PW-1] and father of Kamalathasan [not examined]. At the time of the occurrence i.e., on 18.04.2017, the family was residing in the first floor of the house belonging to one Jeyagantham in South Street, Mannargudi. Jeyaraman was constructing a house in Kaathayeeamman Kovil Street, which is little away from South Street and therefore, he used to stay in the construction site.

2.2. Ramesh [A1] is the cousin brother of Rajmohan [A2] and they were also residing in and around South Street, Mannargudi. Mohanambal [PW-1] was in the habit of keeping the volume of her television very loud and causing disturbance to others. On 18.04.2017, around 10.30 in the night, the television in Mohanambal's [PW-1's] house was blaring and so, Ramesh [A1] came there and started abusing Mohanambal [PW-1]. Mohanambal [PW-1] got down from the first floor of her house and came to the street. On seeing her, Ramesh [A1] started further abusing her in filthy language. Therefore, Mohanambal [PW-1] called her husband Jeyaraman, who came to the place quickly and questioned Ramesh [A1]. At that time, Rajmohan [A2], who was living in the next house, was also there in the street and watching everything.

2.3. An altercation ensued between Ramesh [A1] and Jeyaraman in this regard, in which, it is alleged that Ramesh [A1] picked up an iron rod lying in the street and attacked Jeyaraman and caused injuries to him. It is the specific case of the prosecution in the final report that Jeyaraman and Ramesh [A1] wrestled and rolled on the road and thereafter, Jeyaraman rushed to his house, brought a knife and stabbed Ramesh [A1] in the abdomen. On seeing this, Rajmohan [A2] joined the match and held Jeyaraman tightly since Jeyaraman was having a knife with him. Using this opportunity, Ramesh [A1] is said to have attacked Jeyaraman with a brick on the back of his head. Soon, the neighbours gathered and Mohanambal [PW-1] called an auto-rickshaw and took her husband Jeyaraman to the Government Hospital, Mannargudi, where Jeyaraman was examined by



Dr.Saravanakumar [PW-12] at 11.55 p.m. on 18.04.2017. At that time, Jeyaraman was unconscious and when enquired by Dr.Saravanakumar [PW-12], Mohanambal [PW-1] stated that one known person attacked Jeyaraman with a brick on the back of his head and he lost his balance and fell on the ground. Dr.Saravanakumar [PW-12] noted the following injuries in the Accident Register, which was marked as Ex.P5:

- (a)laceration wound 3x1x1 cm on the left and right eyebrows;
- (b)laceration wound 2x1x1 cm above left eyebrow;
- (c)contusion 4 x 2 cm over right eyebrow; and
- (d)contusion 3 x 2 cm over right eyebrow.

2.4. Jeyaraman was given first aid in the Government Hospital, Mannargudi and for further treatment, he was referred to Thanjavur Medical College Hospital, where he was examined by Dr.A.R.Sampath [PW-14] at 01.55 a.m. on 19.04.2017 and was admitted as an inpatient vide Accident Register [Ex.P7]. Dr.A.R.Sampath [PW-14], in his evidence as well in the Accident Register [Ex.P7], stated that Jeyaraman was conscious and was accompanied by his wife Mohanambal [PW-1].

2.5. Intimation was sent to the jurisdictional police from the hospital, pursuant to which, Gunaseelan [PW-19], Special Sub-Inspector of Police, Town Police Station, Mannargudi, came to Thanjavur Medical College Hospital and recorded the statement of Jeyaraman [Ex.P1], based on which, he registered a case in Mannargudi Town P.S.Crime No.327 of 2017 on 19.04.2017 for the offences u/s. 294-B, 324, 342 and 506(II) IPC at 23.30 hours [11.30 p.m.] on 19.04.2017 against Ramesh [A1] and Rajmohan [A2] and prepared the printed First Information Report [Ex.P12], which has reached the jurisdictional Magistrate on 21.04.2017 as could be seen from the endorsement thereon.

2.6. Gunaseelan [PW-19], Special Sub-Inspector of Police, went to the place of occurrence and prepared the observation mahazar [Ex.P2] and rough sketch [Ex.P13] and seized the following articles viz., (i) iron rod [MO-1], (ii) wooden log [MO-2] and (iii) chamber brick [MO-3] under the cover of a mahazar Ex.P3. Gunaseelan [PW-19], Special Sub-Inspector of Police, arrested Ramesh [A1] on 20.04.2017 at 01.30 p.m. and remanded him in judicial custody. Jeyaraman died on 21.04.2017 at 06.55 p.m. as could be seen from the evidence of Dr.Kumarasenthil [PW-15]. This was intimated to the police and accordingly, Subramanian [PW-20], Inspector of Police, took up investigation of the case and altered the case to one u/s.302 IPC.

2.7. On 22.04.2017, Subramanian [PW-20], Inspector of Police, conducted inquest over the body of Jeyaraman in the Thanjavur Medical College Hospital. After the inquest, the body



was sent for postmortem and Dr.Udhayabanu [PW-18] conducted autopsy on the body of Jeyaraman and issued the postmortem certificate [Ex.P11]. In the postmortem certificate [Ex.P11], it was found, on dissection, that there was a depressed fracture of 6 cm x 4 cm on the right frontal bone and a fracture of 4th cervical vertebrae (C4). After obtaining the viscera report [Ex.P6], Dr.Udhayabanu [PW-18] gave his final opinion in the postmortem certificate [Ex.P11] as under:

'FINAL OPINION:

The deceased would appear to have died of complications of head and cervical spine injuries due to injuries over the vital structures of brain and spinal cord.'

2.8. Rajmohan [A2] surrendered before the learned Judicial Magistrate II, Thanjavur, on 24.04.2017 and on intimation, the police took him to custody on 27.04.2017. After taking custody, his confession statement was recorded and nothing was recovered by the police.

2.9. On the transfer of Subramanian [PW-20], Inspector of Police, investigation was continued by Kalaniyappan [PW-21], Inspector of Police, who examined various witnesses, collected various reports of the experts, completed investigation and filed a final report in P.R.C.No.16 of 2017 in the Court of Judicial Magistrate I, Mannargudi, for the offences 294-B, 342, 302 and 302 r/w 34 IPC against the appellants.

2.10. On appearance of the appellants, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.100 of 2017 and was tried by the Principal District and Sessions Court, Thiruvavur.

2.11. At this juncture, it is necessary to state that the following charges were framed against the appellants by the trial Court based on the charge sheet and 161(3) Cr.P.C. statements of the prosecution witnesses:

Charge I:

On 18.04.2017, around 10.30 p.m., while Mohanambal was watching television in her house, you [Ramesh - A1] came to her house and scolded her for keeping the volume so loud; in this case, a quarrel ensued between you [A1] and Mohanambal; that Mohanambal called her husband Jeyaraman, who came to the place at 11.30 p.m.; at that time you [Ramesh - A1] was standing near the house of Rajmohan [A2]; Jeyaraman questioned you [Ramesh - A1] as to why you were abusing his wife; angered at that, you [Ramesh - A1] abused Jeyaraman by calling him bastard, for which you [Ramesh - A1] are punishable u/s.294-B IPC.

Charge II:

In the course of the same transaction, you [Ramesh - A1] picked up an iron rod and attacked Jeyaraman on his forehead and



caused injuries to him; when Jeyaraman tried to defend himself, he received injuries in his arms; thereafter, both of you grappled with each other and rolled on the ground on seeing which, Mohanambal took away the iron rod from you [Ramesh - A1]; that you [Ramesh - A1] bite Jeyaraman, which further angered him and so he went and brought a knife and stabbed you [Ramesh - A1] in the abdomen; at that time, Rajmohan [A2] held Jeyaraman tightly and you [Ramesh - A1] took a brick and hit Jeyaraman on his head repeatedly, due to which, Jeyaraman suffered injuries and despite hospitalization, he succumbed to the injuries on 21.04.2017 and thereby, you [Ramesh - A1] are punishable u/s.302 IPC and Rajmohan [A2] is punishable u/s.302 r/w 34 IPC. When questioned, the accused pleaded 'not guilty'.

2.12. To prove the case, the prosecution examined 21 witnesses and marked 13 exhibits and 5 material objects. When the appellants were questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same, but Ramesh [A1] stated that Jeyaraman stabbed him in his abdomen. None was examined from the side of the accused and no exhibit was marked.

2.13. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 28.03.2019 in S.C.No.100

of 2017 convicted and sentenced the appellants as follows :

Accused	Provision under which convicted	Sentence
A1	Section 302 IPC	life imprisonment and fine of Rs.1,000/-, in default, to undergo 3 months rigorous imprisonment.
A2	Section 302 r/w 34 IPC	life imprisonment and fine of Rs.1,000/-, in default, to undergo 3 months rigorous imprisonment.
A1 & A2	Section 294-B IPC	15 days imprisonment

The sentences were ordered to run concurrently.

2.14. Challenging the aforesaid conviction and sentences, the appellants/accused have filed the present appeal.

3. Heard Mr.R.Manickaraj, learned counsel appearing for the first appellant [Ramesh-A1] and Mr.A.Mohamed Ismail, learned



counsel appearing for the second appellant [Rajmohan-A2] and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent State.

4. The prosecution has proved beyond a peradventure the following facts:

- (i) that Jeyaraman and his wife Mohanambal [PW-1] were residing in South Street, Mannargudi;
- (ii) the appellants were their neighbours;
- (iii) Ramesh [A1] is the cousin brother of Rajmohan [A2];
- (iv) a quarrel ensued on 18.04.2017 in the night around 10.30 p.m. in connection with Mohanambal [PW-1] keeping the volume of her television very loud;
- (v) Jeyaraman sustained some injuries and he died in the Thanjavur Medical College Hospital, on 21.04.2017 at about 06.55 p.m.

5. The short question is, do the proved facts, in this case, establish the charges that were framed against the appellants herein.

6. The statement of Jeyaraman [Ex.P1], which was recorded by Gunaseelan [PW-19], Special Sub-Inpsector of Police, in the Thanjavur Medical College Hospital, is no doubt a dying declaration relevant u/s.32 of the Evidence Act, though it was given to a police officer.

7. Mr.R.Manickaraj, learned counsel appearing for the first appellant [Ramesh - A1], contended that Mohanambal [PW-1] had taken Jeyaraman to the Government Hospital, Mannargudi, immediately after the incident, where Jeyaraman was examined at 11.30 p.m. on 18.04.2017 by Dr.Saravanakumar [PW-12] to whom Mohanambal [PW-1] stated that Jeyaraman was attacked by one known person with a brick on the back of his head. However, the complaint statement of Jeyaraman was allegedly recorded by the police only at 22.15 hours [10.15 p.m.] on 19.04.2017, wherein, he has given a totally different version implicating Rajmohan [A2] in the offence. Mohanambal [PW-1], Sasikumar [PW-8] and Murugesan [PW-9], in their evidence, have stated that during the wordy quarrel between Ramesh [A1] on one side and Jeyaraman and Mohanambal [PW-1] on the other side, Ramesh [A1] attacked Jeyaraman with an iron rod, caused injuries to him and soon Rajmohan [A2] came there, held Jeyaraman and at that time, Ramesh [A1] took a brick and grievously attacked Jeyaraman and caused injuries. They have not stated a word about the fact that after Ramesh [A1] attacked Jeyaraman, the latter went inside the house, brought a knife and stabbed Ramesh [A1] in the abdomen. The other neighbours viz., Rajendran [PW-2], Ganesan [PW-3], Ganesh [PW-4] and Ramesh [PW-5] turned hostile and did not support the prosecution case. In fact, in the cross-examination



of Rajendran [PW-2], the Public Prosecutor has put a clear suggestion that after Ramesh attacked Jeyaraman with an iron rod, they both grappled with each other and fought; unable to withstand the pain, Jeyaraman went inside his house, brought a knife and stabbed Ramesh [A1] and at that time, Rajmohan [A2] came and held Jeyaraman and Ramesh [A1] hit Jeyaraman with a brick.

8. Mr.R.Manickaraj, learned counsel, took us through the evidence of Gunaseelan [PW-19], Special Sub-Inspector of Police, who recorded the statement of Jeyaraman [Ex.P1] in the hospital and submitted that the said witness had accepted in the cross-examination, that Jeyaraman had given a statement stating that in the quarrel, he brought a knife and stabbed Ramesh [A1]. That apart, the said witness has also accepted in the cross-examination that at the time of arrest of Ramesh [A1], he found a stab injury in his abdomen and that injury was noted by the learned Magistrate at the time of remand.

9. In such view of the matter, we are unable to place much reliance on certain portions of the evidence of Mohanambal [PW-1], Sasikumar [PW-8] and Murugesan [PW-9] that Ramesh [A1] and Rajmohan [A2] were only the aggressors. From an overall reading of the prosecution, we are able to decipher that in the quarrel, that ensued on that day, Ramesh [A1] abused Mohanambal [PW-1] for keeping the volume of the television loud and attacked Jeyaraman with an iron rod, which was lying on the road. It is nobody's case that Ramesh [A1] had come armed with a weapon and when both Ramesh [A1] and Jeyaraman wrestled and rolled on the road, Ramesh [A1] assaulted Jeyaraman using the rod. Though in the charge sheet, the prosecution fairly stated that Jeyaraman stabbed Ramesh [A1] and only thereafter, Ramesh [A1] assaulted Jeyaraman with a brick, no witness was produced by the prosecution to place this fact before the Court.

10. In the aforesaid circumstances, we are unable to sustain the conviction of Rajmohan [A2] because he came into the picture only after Jeyaraman brought the knife and stabbed Ramesh [A1] and held Jeyaraman only in order to prevent Jeyaraman from causing further injuries. Hence, the conviction and sentence of Rajmohan [A2] cannot be sustained.

11. Coming to the case of Ramesh [A1], the prosecution evidence satisfactorily shows that he had come to the place of occurrence, picked up a quarrel with Mohanambal [PW-1], abused her and Jeyaraman and thereafter, attacked Jeyaraman with an iron rod as well with a brick. Ramesh [A1] neither had the knowledge nor the intention to cause death of Jeyaraman. Therefore, Ramesh [A1] is convicted of the offence u/s.325 IPC and sentenced to undergo imprisonment for three years.



12. In view of the foregoing reasons:

- (i) the conviction of Ramesh [A1] for the offence u/s.302 IPC is modified to one u/s.325 IPC and he is sentenced to undergo imprisonment for three years. However, the sentence of fine imposed by the trial Court is confirmed. Conviction and sentence for the offence u/s.294-B IPC is confirmed. Ramesh [A1] is entitled to set-off u/s.428 Cr.P.C.
- (ii) Rajmohan [A2] is acquitted of both the charges u/s.294-B and 302 r/w 34 IPC. The conviction and sentence passed in S.C.No.100 of 2017 on the file of the Principal District and Sessions Court, Thiruvarur, vide judgment and order dated 28.03.2019, insofar as they relate to Rajmohan [A2] are set aside. Fine amount, if any, paid by Rajmohan [A2] shall be refunded. Bail bonds executed shall stand discharged.

In the result, this Criminal Appeal is partly allowed qua Ramesh [A1 - first appellant] and allowed qua Rajmohan [A2 - second appellant]. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gm

To

1.The Principal District and Sessions Judge,
Thiruvarur.

2.Do through the Chief Judicial Magistrate,
Thiruvarur.(For information)

3.The Superintendent of Central Prison,
Tiruchirappalli.

4.The Inspector of Police,
Mannargudi Town Police Station,
Mannargudi,Thiruvarur District.

5.The Public Prosecutor,High Court, Madras.

Copy to:

The Section Officer,Criminal Section,
High Court,Madras

+1 cc to Mr.A.Mohamed Ismail, Advocate Sr.NO. 14388

Criminal Appeal No.240 of 2019

AD(CO)

A.SK(10/03/2022)