



BAIL SLIP

The Appellant/Accused namely Mariyappan, S/o.Ramasamy, aged 64 years was released on bail by this Honourable Court in CrI.MP.No.18102 of 2019 in CrI.A.No.843 of 2019 vide order dated 12.12.2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.A.No.843 of 2019
and
CrI.M.P.No.18102 of 2019

Mariyappan

.. Appellant/Accused

Versus

State Rep. by
The Inspector of Police
Pallikaranai Police Station
Chennai - 600 100
Crime No.825/2012

.. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, against the Judgment dated 12.03.2018 in S.C.No.135/2013 on the file of the Principal Sessions Judge of Kancheepuram District @ Chengalpattu and acquit the accused from all the charges.

For Appellant : Mr.S.L.Venkatesan

For Respondent : Mr.S.Vinoth Kumar
Government Advocate (CrI.Side)

JUDGMENT

This criminal appeal is filed against the judgment of the learned Principal Sessions Judge of Kancheepuram District at Chengalpattu dated 12.03.2018 in S.C.No.135/2013, whereby the appellant was convicted for an offence under Section 304 I.P.C., and was sentenced to undergo 10 years rigorous imprisonment and



to pay a fine of Rs.5,000/-.

2. On 28.04.2012 at about 01.00 am, when P.W.8 was on duty, PW1 came to the police station and lodged a complaint stating that the victim namely one Mr.Tharun, his son-in-law returned home at about 11.30 pm and at that time the accused who is a neighbour was watching television with loud noise which had disturbed the child in their house and therefore the deceased went up to the accused and demanded reduction of the television volume, enraged, by which, the accused came out in a fit of rage with a knife and stabbed him on the left side chest. Immediately, he took him to the nearest private hospital, where he was declared to be dead and therefore the complaint.

3. A case was registered in Crime No.825/2012 for an offence under Section 302 I.P.C. Initially PW8 and thereafter PW9 took up the investigation, completed the same and laid a final report which was taken on file as P.R.C.No.74/2012 before the Judicial Magistrate, Alandur and after furnishing the copies as per Section 207 of Cr.P.C., the case was committed to the Court of Sessions under Section 209 of Cr.P.C., and was taken on file as S.C.No.135/2013. The Trial Court framed the charge under Section 302 IPC and when the charge was read over, and the appellant was questioned, he denied the charge and stood trial.

4. The prosecution so as to prove the charge, examined one Thiru.Saravanan, the defacto complainant, the father-in-law of the victim and he was the eye witness to the incident as PW1. One Tmt. Poongavanam, the wife of the victim who was also the eye witness to the incident as PW2. One Thiru.Sureshkumar, the witness to the Observation Mahazar as PW3. One Thiru.Raja, who was the witness to the recovery of the knife and the other material objects as PW4. One Dr.Chandrabose Ambethkar, the post mortem doctor as PW5. One Dr.Bhuvaneshwari, who received the body of the deceased and kept it in the mortuary as PW6. One Thiru.Senthilkumar, witness to the confession statement as PW7. One Thiru.B.Sagadevan, Inspector of Police who registered the complaint and commenced the investigation as PW8 and one Thiru.Gnanasekaran, Inspector of Police who continued the investigation and filed the final report as PW9.

5. The prosecution also marked the complaint lodged by PW1 as Exhibit P1, the Observation Mahazar as Exhibit P2, Postmortem Certificate as Exhibit P3, Admitted portion in the confession statement leading to the recovery of M.O's as Exhibit P4 and the Seizure Mahazar as Exhibit P5, First Information Report as Exhibit P6, Rough Sketch as Exhibit P7, Inquest report as Exhibit P8 and Biology report as Exhibit P9. During the cross examination, Defence Exhibit D1, xerox copy of the the photos were marked on behalf of the defence.

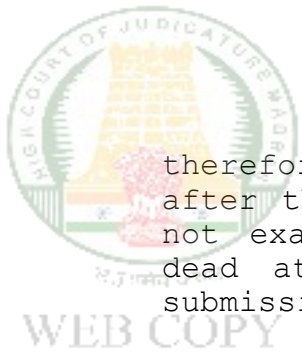


6. With the above, the prosecution rested its case. Upon being questioned under Section 313 (1)(b) Cr.P.C., the accused denied the evidences and the incriminating circumstances against him as false. Thereafter, no further evidences was let in on behalf of the defence and the Trial Court proceeded to hear the learned Public Prosecutor on behalf of the prosecution and the learned counsel for the accused and by a judgment dated 12.03.2018 found that the prosecution had proved the incident and the manner of death. Further, it considered the nature of the occurrence and concluded that there was no any prior motive established by the prosecution and the attack was also not with a murderous motive and therefore, came to the conclusion that the offence under Section 302 IPC is not made out, but the lesser offence under second part of Section 304 IPC alone is made out and sentenced the appellant to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.5000/-. Aggrieved by which, the present criminal appeal is filed before this Court.

7. Heard Mr.S.L.Venkatesan, learned counsel for the appellant and Mr.S.Vinoth Kumar, learned Government Advocate (Crl. Side) on behalf of the prosecution.

8. The learned counsel for the appellant taking this Court through the evidence before the Trial Court, firstly would submit that there is no independent evidences except the interested witnesses namely PW1 father of the PW2 and the father in law of the victim, PW2 is the wife of the victim. In a crowded locality, where the television volume is alleged to have lead to the ruckus, there would have other persons who have seen the incident or would have come to know of the incident soon after the scene, but no other witnesses have been examined and therefore the eye witnesses being interested witnesses, their evidences are not trust worthy so as to convict the appellant.

9. From the Exhibit D1 photographs, it would be clear that apart from the house of the accused and the victim, there was no other house nearby and he would submit that the entire case of the prosecution as if PW1 was residing nearby is false. Therefore, he was naturally present in the scene of occurrence is false. He would further submit that there are serious infirmities in the investigation and from the cross examination of the investigation officer, it would be clear that he did not even no who wrote the complaint and the other statements and therefore no proper investigation was conducted. He would further submit that the recovery is artificial and there is no clinching evidence so as to connect the accused to the occurrence. He would further submit that in a case of serious nature, the FIR reached the Court only after three days and



therefore that also raises suspicion, there would have been after thought in naming the appellant. The prosecution also did not examine the doctor, who pronounced the victim as brought dead at the private hospital and therefore, relying on the submissions, he would urge this Court to acquit the appellant.

10. Per contra, the learned Government Advocate (Crl.Side) would submit that in this case, the prosecution has proved the charge under second part of 304 IPC, where PW1 and PW2 were the only eye witnesses, as the said occurrence happened at 11.30 pm. They have deposed clearly and categorically. Their presence in the scene of occurrence is natural. The alleged weapon namely the knife has been recovered and produced before the Court. The medical evidence clearly proves the single stab injury and therefore the prosecution has established the charge beyond doubt. Therefore, he would submit that there is nothing for this Court to consider in this appeal and prayed that the conviction and sentence imposed by the Trial Court be confirmed by this Court.

11. I have considered the rival submissions made on behalf of both sides and perused the material records of the case. As far as the charge is concerned, the prosecution has examined two witnesses namely PW1, defacto complainant and PW2, wife of the deceased. Their presence at the scene is natural and they have clearly deposed about the incident. The argument that they are interested witnesses cannot be countenanced because the close relatives will be more interested in prosecuting the offender and there is no iota of defence by the accused by way of cross examination or otherwise that they are wilfully giving false evidence so as to implicate the accused who is otherwise not guilty. Therefore, the said contention of the learned counsel for the appellant cannot be accepted.

12. Similarly, the other contentions raised that the FIR reached three days after the registration to the learned Judicial Magistrate is concerned, in this case it is not of much significance because the case pertains to sole accused arising out of a quarrel between the neighbours further the same cannot form the basis for acquittal when there is evidence otherwise against the accused.

13. Further contention of the learned counsel for the appellant that the presence of PW1 is unclear, is also liable to be rejected because on a careful perusal of the entire evidence, it is clear that they were residing nearby. Therefore, it is but natural that in the night that the parents of the PW2 residing at Kamatchiamman Nagar, 1st Street, Pallikaranai being with their daughter especially when her husband had not returned to the house till 11.30 pm. The other contentions raised by the learned



counsel for the appellant are also without any merits in this case.

14. Even though charged under Section 302 IPC, the Trial Court has rightly found that the incident had happened in a fit of rage and even the single stab is not with an intention to cause death and therefore, convicted the appellant for an offence under second part of Section 304 IPC. I also perused the Exhibit D1 photographs. Just because there was no house and nearby in the photographs, it cannot be held that the case of the prosecution that PW1 was residing at Kamatchiamman Nagar, 1st Street, Pallikaranai, Chennai is false. No detailed cross examination was done to establish the said fact and therefore, I reject the said arguments also. Accordingly, the conviction of the appellant is hereby confirmed.

15. Further, convicting the appellant for an offence under second part of Section 304 IPC, the Trial Court has imposed the maximum sentence of 10 years. It is seen from the very finding of the Trial Court and the evidence on record that there was a wordy quarrel between the neighbours and in a fit of rage, the accused ran inside the house and took up a knife and made a single stab.

16. Considering the manner in which the offence had happened, considering the age of the appellant which was at the time of incident is 57 years and currently now 67 years and considering the sentencing policy as enunciated by the Hon'ble Apex Court in the case of State of Madhya Pradesh vs. Suresh reported in CDJ 2019 SC 194, whereby, this Court has to consider both the seriousness of the offence and considering the age of the accused and other factors, I am inclined to reduce the sentence from 10 years rigorous imprisonment to five years.

17. With the above modification in sentence, this criminal appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

dhk



To

1. The Principal Sessions Judge
Chengalpattu, Kancheepuram
2. The Chief Judicial Magistrate,
Chengalpattu (For Information).
3. The Judicial Magistrate,
Alandur.
4. The Inspector of Police,
Pallikaranai Police Station
Chennai - 600 100
5. The Superintendent,
Central Prison - I (convict),
Puzhal, Chennai.
6. The Public Prosecutor,
High Court, Madras.
7. The Section Officer,
Criminal Section,
High Court, Chennai - 104.

+1cc to M/s.S.L.Venkatesan, Advocate, S.R.No.33335

Crl.A.No.843 of 2019

SJ(CO)
UMA(23/06/2022)