BAIL SLIP

The Appellant/First Accused viz., Vellai Thurai was directed to be released on bail in and by the order of this Court dt. 7.1.99 made in Crl.M.P.No.10566/98 in C.A.647/96.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:28-12-2004

Coram:

The Honourable Mr. Justice N. DHINAKAR
and
The Honourable Mr. Justice N.KANNADASAN

Crl. Appeal No.647 of 1996

Vellai Thurai :: Appellant

:versus:

State, rep. by Inspector of Police
Tondiarpet Police Station :: Respondent

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Appeal under Sec.374 of Crl.P.C. against the conviction and sentence imposed upon the appellant by the learned Principal Sessions Judge, Chennai in S.C.No.163 of 1996 dt.19-8-1996.

For Appellant :: Mr. John Sathyan
For Respondent :: Mr. V.M. Rajendran
Addl. Public Prosecutor

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JUDGMENT
(Delivered by N. DHINAKAR, J.)

Accused No.1 in S.C. No.163 of 1996 on the file of Principal Sessions Judge, Chennai is the appellant. He was tried along with another accused, who was arrayed as A-2, and the allegation against them is that at about 11.30 p.m. on 24-4-1995, the appellant and A-2, who was acquitted by the trial court, went to the tea-stall of the deceased and asked the deceased, who was taking his food inside the tea-stall, for some water and since the water was not given immediately, the appellant kicked the food-plate from which the deceased was taking his food and stabbed him. The learned trial Judge, finding the appellant guilty under Sec.302 IPC, sentenced him to life imprisonment while he acquitted A-2 under Sec.302 IPC read with Sec.34 as well

as Sec.341 IPC. The appellant as well as A-2 were acquitted under Sec.506(ii) IPC. The appellant challenges his conviction and sentence.

2. The case of the prosecution is as follows:

Radhakrishnan (deceased) was the owner of a tea-stall and Prakash (PW-1) was employed under him in the said tea-stall. Velayutha Nair (PW-2) is the father of the deceased. At about 11.30 p.m. on 24-4-1995, the deceased, PW-1 and PW-2, Chandran and others were in the tea-stall having their food. At that time, the appellant, who came there on a cycle-rickshaw along with A-2, asked the deceased for some water. The deceased in turn asked Chandran to bring water for the appellant but Chandran took some time in bringing the water. The appellant got angry since the water was not supplied immediately and started shouting. The deceased asked him not to shout as the water had to be pumped out and brought. The appellant not satisfied with the answer of the deceased, kicked the food-plate from which the deceased was taking his food and started trampling him. When the deceased attempted to run inside the tea-stall, he was caught hold of by A-2 and the appellant stabbed him on the chest. When PW-1 and PW-2 tried to apprehend the appellant and A-2, the appellant threatened them with knife and ran away from the place with the cycle-rickshaw.

PW-1 and PW-2 took the injured Radhakrishnan to the Stanley Medical College Hospital and produced him before PW-3 who, on examining the injured, pronounced him dead. Ex.P-2 is the copy of the accident register. PW-3 thereafter sent the intimation to the Tondiarpet Police Station.

On receipt of intimation, the Inspector of Police (PW-9) reached the Stanley Medical College Hospital and finding PW-1 there, questioned him. PW-1 gave a statement regarding the incident. The statement was reduced into writing. PW-9 returned to the police station on the complaint (Ex.P-1) given by PW-1, registered a case in Crime No.301 of 1995 against the appellant and A-2 under Secs.341 and 302 IPC by preparing the printed First Information Report. Ex.P-12 is the copy of the printed F.I.R.

PW-9 took up investigation and reached the scene of occurrence at about 4.15 a.m. , prepared the observation mahazar (Ex.P-6) and drew a rough sketch (Ex.P-13) in presence of the witnesses. He seized blood-stained tar-portion under a mahazar. He questioned the witnesses and recorded their statements. He then proceeded to the Stanley Medical College Hospital and examined the Doctor, who examined the deceased. He sent requisition to the panchayatars for conducting inquest and after arrival of the panchayatars, inquest was conducted between 7.00

a.m. and 9.00 a.m. Ex.P-14 is the inquest report. He sent the body of the deceased with a requisition (Ex.P-3) for conducting autopsy.

Dr. Thangaraj (PW-4), Additional Professor, Forensic Medicines, attached to the Stanley Medical College Hospital,on receipt of Ex.P-3, requisition, conducted autopsy over the dead-body of the deceased and noted the following injuries:

> "An oblique stab injury 4 X 1 cms on front of left side of chest 4 cms away from midline and 21 cms below the left mid-clavicular. On dissection there is an oblique cut 4 cms. long involving sixth intercostal muscle. ... Bruising of retro-sternal tissues to an extent of 10x5x0.5 cms seen. On further dissection there is an oblique cut over the anterior wall of the pericardium to a length of 2.5 cms ... On further dissection there is an oblique cut over the antereo-inferior wall of the right ventricle to a length of 1.5 cms to its full thickness communicating with the right ventricular chamber with bruising of tissues of the heart along the lower border of the cut to an extent of 2x0.5x0.2 cms. The depth of the wound is 12 cms and direction of the wound is upward and backwards."

PW-4 was of the opinion that the deceased would appear to have died of shock and haemorrhage due to stab injury to the heart. Ex.P-14 is the post-mortem certificate.

PW-9 questioned some witnesses and recorded their statements. He searched for the accused and on the information received, he proceeded to the junction of Suriyanarayana Chetty Street and Jeevarathinam Road and arrested them at about 6.00 p.m. on 25-4-1995 in the presence of witnesses. The appellant gave a statement and in pursuance of the admissible portion thereof (Ex.P.10), he took the police party to his house and produced blood-stained knife and blood-stained shirt (M.O.6), which were seized under a mahazar Ex.P-11. Accused were brought to the police station and locked-up. On the next day, they were sent to court for remand. The material objects were forwarded to the court with a requisition to send them for chemical analysis. After the completion of investigation, final report was filed against the appellant and A-2 on 25-9-1995.

When the appellant and A-2 were questioned under Sec.313 Crl.P.C. regarding the incriminating circumstances appearing against them, they denied the same and pleaded not guilty.

The learned trial Judge accepted the prosecution case and held that a case under Sec.302 IPC is made out against the

appellant and accordingly convicted the appellant and sentenced him to undergo imprisonment for life.

2. The cause of death of Radhakrishnan is not disputed by the defence and the same stands established through the evidence of PW-4, who conducted autopsy and issued post-mortem certificate (Ex.P-14). The cause of death was stated to be shock and haemorrhage on account of the stab injury and the corresponding internal injury to the vital organs of the body. This injury, in the opinion of PW-4, was sufficient in the ordinary course of nature to cause death. On the medical evidence, we therefore hold that Radhakrishnan had died on account of homicidal violence. This takes us to the next question whether the learned trial Judge was correct in convicting the appellant under Sec.302 IPC and sentencing him to life imprisonment.

3. Learned counsel for the appellant made two contentions, viz.

(i) That even if the entire facts as projected by the prosecution are taken to be true, from the facts and circumstances of the case and the evidence available on record, it could be said that the appellant could not have intended to cause the death of the deceased as he had no motive or prior enmity against the deceased and the occurrence having taken place without premeditation in the heat of passion upon a sudden quarrel, he may be given the benefit of '*Exception 4*' to Sec.300 IPC.

(ii) The appellant, in the course of sudden quarrel, gave only one blow with the knife, which accidently landed on the vital part, viz. chest of the deceased, which proved fatal and, in these circumstances, this being a case of 'single stab injury', the appellant may be given the benefit of '*Exception 4*' to Sec.300.

In support of his contentions, learned counsel relied on the judgment of the Supreme Court in *THOLAN v. STATE OF TAMIL NADU* (1984 SCC [Cri.] 164).

4. On these contentions, we have heard the learned Additional Public Prosecutor.

5. PW-1 and PW-2 were examined by the prosecution as the eye-witnesses to the occurrence. It is the evidence of PW-1, who was employed under the deceased, that at about 11.30 p.m. on 24-4-1995, himself, PW-2, the deceased and others were having their food and at that time, the appellant and A-2, who came on cycle-rickshaw to the tea-stall, asked the deceased for some water. The deceased in turn asked Chandran to bring water and on seeing that water was not supplied immediately, the appellant started shouting and kicked the foot-plate of the deceased and

trampled him to the ground. Sensing the belligrent mood of the appellant, the deceased tried to run inside the tea-stall but he was caught hold of by A-2 and the appellant stabbed him on the chest. When PW-1 and others tried to apprehend the appellant and A-2, they were threatned with knife-point and the appellant and A-2 ran away from the scene. Immediately the injured was taken to the hospital where, on examination by the Doctor, he was pronounced dead. A complaint was given by PW-1 to PW-9 Inspector of Police, who reached the hospital on receipt of the information. Similar is the evidence of PW-2.

6. On going the evidence of PW-1 and PW-2, we find no infirmity in the evidence of both the eye-witnesses. The testimony of both the witnesses are reliable and trustworthy and, therefore, can safely be relied upon. It is not in dispute that PW-1 is the employee of the deceased and PW-2 is deceased's father and, therefore, their presence in the tea-stall at the time of occurrence is natural. We, therefore, accept the evidence of PW-1 and PW-2 and hold that it was the appellant who stabbed the deceased.

7. Now let us deal with the contentions raised by the learned counsel for the appellant that the appellant is entitled to the benefit of '*Exception 4*' to Sec.300 since firstly, the appellant did not intend to cause the death of the deceased as the incident took place in the course of a sudden quarrel and secondly, that this is a case of 'solitary stab injury'. Considering the facts and circumstances of the case, we find it difficult to countenance the contentions raised by the learned counsel. Here is a case where the deceased, his father and his employees, after closing down their tea-stall around 11.30 p.m., were having their food in the tea-stall and at that time the appellant and A-2 came there and asked the deceased for some water. The deceased asked his employee Chandran to get some water and since there was delay in bringing the water, the appellant in a belligerent mood started shouting at the deceased, kicked the food-plate from which the deceased was taking his food, trampled him to the ground and when he tried to run away, stabed him on the chest. In the above scenario, we cannot accept the contention of the learned counsel that the incident occurred without any premeditation in the heat of passion upon a 'sudden quarrel'. We therefore hold that the appellant is not entitled to the benefit of '*Exception 4*' to Sec.300 IPC.

8. Now, let us analyse the *Tholan* case, cited supra, relied upon by the learned counsel for the appellant. After having carefully perused the judgment, we are of the opinion that the said decision will not apply to the facts and circumstances of the present case. In *Tholan case*, the learned Judges, taking the facts and circumstances therein, were satisfied that the

appellant therein wielded a weapon like a knife and therefore he could be attributed with the knowledge that he was likely to cause an injury which was likely to cause death and in such a situation, he would be guilty of committing an offence under Section 304 Part II IPC. The decision in the said was rendered on the facts and circumstances therein and that the Supreme Court did not lay down any law that in cases where there is single injury, the accused is entitled to the benefit of '*Exception 4*' to Sec.300 IPC irrespective of the other circumstances. The judgment relied upon by the learned counsel is, therefore, of no assistance and will not go to the rescue of the appellant.

9. In this connection, we may refer to the decision of the Supreme Court in *STATE OF KARNATAKA v. VEDANAYAGAM* (1995) 1 SCC 326 wherein the question that arose for consideration was whether the High Court was right in holding that whenever there is single injury the offence would be only culpable homicide though the medical evidence is to the effect that the same is necessarily fatal and sufficient in the ordinary course of nature to cause death. In this case, the accused gave a knife blow on the left chest of the deceased as a result of which the deceased fell down and died. The trial court convicted the accused under Sec.302 IPC and sentenced him to life imprisonment but, on appeal, the High Court, relying on the decision in *Tholan case*, cited supra, held that the offence would come down to Sec.304 Part II IPC. The finding of the High Court was challenged before the Supreme Court. The Supreme Court after elaborately considering the decisions in *Visra Singh v. State of Punjab* (AIR 1958 SC 465) and *Jagrup Singh v. State of Haryana* (1981) 3 SCC 616, distinguished the decision in *Tholan case*, cited supra, and held as follows:

> "Thus it is clear that ingredient of clause 3rdly is not the intention to cause death but on the other hand the ingredient to be proved is the intention to cause the particularly injury that was present. It is fallacious to contend that wherever there is a single injury only a case of culpable homicide is made out irrespective of other circumstances. ... there is no legal basis whatsoever for the High Court to hold that since the respondent-accused gave only one blow, though found to be sufficient in the ordinary course of nature to cause death, clause 3rdly of Section 300 is not attracted. ... It is important to note that there was neither a quarrel nor a fight between the deceased and the accused. The words uttered by the accused against the deceased followed by stabbing with the dagger on the left side of the chest of the deceased, would clearly indicate that he intended to cause that particularly injury which was objectively found to be sufficient in the ordinary course of nature to cause

> death. ... there is no doubt whatsoever that the accused intended to cause that particular injury on the chest which necessarily proved fatal. Therefore clause 3rdly of Section 300 IPC is clearly attracted. The High Court erred in holding that 'the accused did not intend to cause his death by inflicting the injury on the chest because there was no premeditation and therefore the offence would be culpable homicide. This view of the High Court is not correct and as discussed above clause 3rdly of Section 300 IPC is clearly attracted. For all these reasons, we set aside the judgment of the High Court and restore the judgment of the trial court convicting the accused under Sec.302 IPC and sentencing him to undergo imprisonment for life."

10. In *HUKAM CHAND v. STATE OF HARYANA* (2002) 8 SCC 421, where the deceased died due to infliction of single blow on vital part of the body by the appellant (accused), the Supreme Court rejected the plea for conversion of conviction to that under Sec.304 Part I instead of Sec.302 IPC and justified the conviction under Sec.302 IPC.

11. In *STATE OF U.P. v. PREMI AND OTHERS* (2003) 9 SCC 12, the Supreme Court, while rejecting the contention that the respondents (accused) had no intention to kill and that only a single blow was inflicted on the head of the deceased and, therefore, their conviction deserves to be altered to be one falling under Sec.304 IPC, observed as follows:

> "The mere fact that only a single blow was inflicted on the head by itself is not enough to alter the conviction from Section 302 to Section 304 IPC"

12. The facts in the present case are identical to the one in *Vedanayagam* case, cited supra. In the present case, as narrated above, the appellant, on a trivial issue of not supplying water immediately, after shouting at the deceased, stabbed him on the vital organ of the body in a cruel and unusual manner. Of course, the appellant came to the tea-stall not with the intention to cause the death of the deceased but, the subsequent criminal act of the appellant in shouting against the deceased and stabbing him on the chest with the knife would clearly indicate that he intended to cause that particular injury which was objectively found to be sufficient in the ordinary course of nature to cause death. The intention to cause that particular bodily injury can be gathered from the kind of weapon used, the part of the body aimed at, the amount of force employed and the gravity of the injury suffered. There is sufficient medical evidence on record to show that the injury inflicted was

sufficient in the ordinary course of nature to cause death. Therefore, we are of the clear opinion that the appellant is liable to be convicted under Sec.302 IPC and was rightly done so by the learned trial Judge.

13. We do not find any merit in the appeal. The appeal deserves to be dismissed and, accordingly, it is dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Jai

To:

1. The Principal Sessions Judge, Madras
2. The District Collector, Madras
3. The Director General of Police, Chennai
4. The Public Prosecutor, Madras
5. The Superintendent, Central Prison, Chennai
6.The Inspector of Police,
Tondiarpet Police Station, Madras
7.The XV Metropolitan Magistrate,
George Town, Chennai.
8.-do- Thro The Chief Metropolitan Magistrate
Egmore, Madras -8

+1cc to K.Selvarangan, Advocate Sr 58252

TS (CO)
km/18.1.

Crl.A. No.647 of 1996