

BAIL SLIP

That the Appellant/Accused namely Maadhaiyan was directed to be released on bail by Order of/ this Court dt.10.9.99 in CRL MP No.7588/99 in CRL A No.970/98.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-6-2005

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR  
AND  
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.970 of 1998

Maadhaiyan

.. Appellant/Accused

vs

State rep. by  
Inspector of Police  
Pochampalli Police Station  
Crime No.191/95  
Dharmapuri District

.. Respondent/Complainant

Criminal appeal filed under Sec.374 of the Code of Criminal Procedure against the judgment dated 4.11.1998 and made in S.C.No.107 of 1998 on the file of the I Additional Sessions Judge-cum-Chief Judicial Magistrate, Dharmapuri Division at Krishnagiri.

For Appellant : Mr.R.Sankarasubbu  
For Respondent : Mr.S.Jayakumar  
Additional Public  
Prosecutor

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

The sole accused, who stood charged, tried and found guilty in a case of murder, wherein he was awarded life sentence for an offence under Sec.302 of I.P.C. and also awarded one year Rigorous Imprisonment for the offences under Sec.324 of I.P.C. (two counts), has brought forth this appeal, aggrieved over the

judgment rendered by the Sessions Division, Dharmapuri, in S.C.No.107 of 1998.

2. The short facts necessary for the disposal of this criminal appeal are as follows:

(a) The deceased Krishnan was living with his wife P.W.1 Dhanabaghiyam, and daughter P.W.2 Parimala, at Vadamalampatti. He had two brothers who are the accused and P.W.3 Sivaraman. Originally, they had 4 acres of land and 3 tamarind trees. Seven years prior to the date of occurrence, a panchayat was convened, and the properties were divided. Out of the three tamarind trees, the big one was given to the deceased, while the other two trees were allotted to the other brothers. All of them leased out their respective tamarind tree. The appellant/accused quarrelled and was telling that the big tree should be allotted to him, after the lease period was over. Then, another panchayat was convened just 20 days prior to the date of occurrence. The panchayatdars decided that the deceased should pay Rs.500/- to the appellant/accused, to which course the appellant/accused refused.

(b) On the date of occurrence namely 30.1.1995 at about 10.30 A.M., the deceased was just proceeding to his field. At that time, the appellant/accused intervened and was telling that the house, where the tamarind trees were situated, remained common, and the same should also be divided. The deceased replied that the said house was constructed by him, and hence, it could not be divided. Immediately, the appellant/accused took a palai knife M.O.1 and attacked the deceased on his left hand. On hearing the distressed cry, P.Ws.1 and 2 went nearby and attempted to rescue the deceased. At the time of intervention made by P.Ws.1 and 2, the appellant/accused attacked P.W.1 on the right shoulder and P.W.2 on the right hand, with a knife. With the weapons of crime, the accused fled away from the place of occurrence. P.W.4 Chakravarthy, and P.W.5 Akkumari, have also witnessed the occurrence. Immediately, the injured Krishnan was taken to the hospital by P.Ws.1, 2 and others.

(c) At 12.05 P.M., P.W.19 Dr.Venkatesan, who was on duty in the Government Head Quarters Hospital, Dharmapuri, examined the injured Krishnan. The accident register copy was marked as Ex.P26, where the injuries have been narrated. The Doctor sent a requisition to the Judicial Magistrate. The Judicial Magistrate P.W.12 M.M.Anandakumar, on receipt of the requisition, rushed to the hospital. At about 1.15 P.M., he recorded the dying declaration of the injured. The proceedings were marked as Ex.P11. Both P.Ws.1 and 2 were also examined by the Doctor P.W.19, and the wound certificates in their regard were issued by him, which were marked as Exs.P28 and P29 respectively.

(d) P.W.17 Balakrishnan, the Head Constable, attached to the Government Hospital, Out-Post Police Station, Dharmapuri, on receipt of the information, proceeded to the hospital and recorded the statement of the injured Krishnan, which was marked as Ex.P1.

He, then, went to Pochampalli Police Station and handed over Ex.P1 to P.W.16 Dhanapal, the Head Constable, attached to the said Police Station. On the strength of Ex.P1 complaint, he registered a case in Crime No.8/95 under Sections 324 and 307 of I.P.C. The printed First Information Report Ex.P15 was despatched to the Court.

(e) On receipt of a copy of the FIR, P.W.20 Ajeem, the Sub Inspector of Police, Pochampalli Police Station, took up the matter for investigation and proceeded to the scene of occurrence. An information was received from the Government Hospital that the injured Krishnan died at 7.15 P.M. On receipt of the same, he converted the case to Sec.302 of I.P.C. The express report Ex.P14 was sent to the Court. The Investigating Officer made an inspection of the place of occurrence at 5.00 A.M. on 31.1.1995 and prepared Ex.P2 observation mahazar and Ex.P30 rough sketch. He collected from the place of occurrence M.O.5 bloodstained earth, and M.O.6 sample earth, under Ex.P3 mahazar. He, then, proceeded to the hospital, conducted inquest on the dead body of Krishnan in the presence of panchayatdars and witnesses and prepared Ex.P31 inquest report. The place of occurrence was photographed through P.W.11 Chinnasamy, a photographer. The photographs and their negatives were also marked as Exs.P8 and P9 respectively. A requisition was forwarded to the Government Hospital for conduct of autopsy on the dead body of Krishnan.

(f) On receipt of the requisition Ex.P12, P.W.13 Dr.Natarajan, Assistant Surgeon, attached to the Government Head Quarters Hospital, Dharmapuri, conducted autopsy on the dead body of Krishnan and found the following injuries.

1. A sutured wound left side chest wall 3 cm - 5 cm below the left nipple.
2. A sutured wound left side chest wall 3 cm - 10 cm lateral to injury No.1 with a Coley's Catheter.
3. An incised wound left forearm 3 cm x 1 cm x muscle deep.
4. An incised wound left thigh of 2 cm x 1 cm x muscle deep.
5. A contusion left side shoulder and scapula of 10 cm x 2 cm x red in colour.
6. A linear scratch left side chest wall back of 3 cm x 1 cm x oblique in direction.
7. A linear scratch left side of back lumbar region 5 cm x 1 cm x oblique in direction.
8. An incised wound centre of occipital region of 25 cm x 1 cm x bone deep.
9. A contusion right shoulder and neck of 10 cm x 5 cm x red in colour.
10. A contusion right forearm of 2.5 cm x 1 cm x reddish in colour.

Chest: The injury (1) was found cutting the chest cavity. Obliquely and Omentum, transverse Colon was seen in the pleural cavity. The diaphragm was incised left dome with incised wound anterior aspect of stomach



of 10 cm. Lungs, Heart, Great vessels normal. Fracture of the left 7<sup>th</sup> rib was seen at Costo Chondrial Junction."

The Doctor has issued Ex.P13 postmortem certificate, and has opined that the deceased would appear to have died of shock and haemorrhage due to the above injuries 17 to 20 hours before postmortem.

(g) Further investigation was taken up by P.W.21 Nachiappan, the Inspector of Police, Pochampalli Police Station, and the accused was arrested on 3.2.1995. He volunteered to give a confessional statement, which was recorded by the Investigating Officer in the presence of two witnesses. The admissible part was marked as Ex.P5, pursuant to which, the accused produced the weapons of crime M.Os.1 and 2 palai knife and suri knife respectively, which were recovered under Ex.P6 mahazar. All the material objects recovered from the place of occurrence and from the dead body, and M.Os.1 and 2 which were recovered from the accused, pursuant to the confession, were sent to the Court along with a requisition to send them for chemical analysis. Accordingly, they were subjected to chemical analysis by the Forensic Sciences Department, and the Chemical Analyst's reports Exs.P22, P23 and P24 and the Serologist's report Ex.P25 were received by the Court. On completion of the investigation, the final report was laid before the Judicial Magistrate. Then, the case was committed to the Court of Session, and necessary charges were framed against the accused.

3. In order to prove the charges, the prosecution examined 21 witnesses and relied on 31 exhibits and 8 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses, which he flatly denied as false. He filed a written statement stating that it was due to the sudden quarrel that arose between the parties at the time of the occurrence, and it was neither intentional nor premeditated, and it has got to be considered. No defence witnesses were examined. The learned Sessions Judge, after hearing both sides, found the accused guilty as per the charges and awarded the punishment referred to above. Aggrieved over the said judgment, the appellant has brought forth this appeal.

4. The learned Counsel, though not argued on the merits of the case of the defence, would shortly contend that it was a case, which would not fall within the ambit of murder, but would fall under one of the exceptions to Sec.300 of I.P.C.; that the appellant has given a statement before the lower Court while he was questioned under Sec.313 Cr.P.C.; that from the evidence of P.Ws.1 and 2, who according to the prosecution, are eyewitnesses, it would be clear that there was a quarrel between the deceased and the appellant/accused for a period of half an hour; that in that quarrel, he has acted so due to the sudden provocation; that

the lower Court has failed to consider the same, and hence, it has got to be considered by this Court.

5. It is not in controversy that the deceased Krishnan died out of homicidal violence. It is seen from the evidence that he has also been to the hospital immediately, and on his statement, a case came to be registered originally under Sections 324 and 307 of I.P.C. Subsequently, he died at 7.15 P.M., and the case was converted to Sec.302 of I.P.C. After the inquest was over, the postmortem over the dead body of Krishnan was conducted by the Doctor P.W.13, who has also been examined. From the evidence of P.W.13 and the postmortem certificate Ex.P13 issued by him, it would be abundantly clear that Krishnan died out of homicidal violence. It is pertinent to point out that the fact that the deceased Krishnan died out of homicidal violence was not questioned by the appellant either before the lower Court at the time of trial or before this Court. Thus, it can be safely concluded that Krishnan died on account of homicidal violence.

6. It has to be pointed out that from the evidence of P.Ws.1 and 2 the eyewitnesses, who were also injured at the time of the occurrence, and from the narration of events, it would be quite clear that it was the appellant/accused who stabbed the deceased Krishnan with a knife and caused his death, and apart from that, the accused has also attacked P.Ws.1 and 2 and caused injuries at the time of occurrence. It is also pertinent to point out that P.W.19, the Doctor, had examined P.Ws.1 and 2 at 12.25 P.M. and 12.35 P.M. respectively, on 30.1.1995 and had issued Exs.P28 and P29 wound certificates, wherein he has narrated the injuries found on them. P.Ws.1 and 2 have stated before the Doctor that they were stabbed by a known person at 10.30 A.M. that day, at the place of occurrence. Thus, the Court is able to see sufficient evidence to hold that it was the accused who attacked the deceased with knife, which resulted in his death, and he had also attacked P.Ws.1 and 2 and caused simple injuries.

7. Coming to the question of the act committed by the accused, the Court is able to see sufficient force in the contention put forth by the learned Counsel for the appellant that it would not fall within the ambit of murder. In the instant case, it is true that the prosecution examined P.Ws.1 and 2 to prove the guilt of the accused. The learned Counsel took the Court to the evidence of P.Ws.1 and 2. From their evidence, it could be seen that regarding the property dispute, there was a quarrel which preceded the occurrence, on 30.1.1995 at about 10.00 A.M. Both the witnesses have spoken to the fact that there was a quarrel for a period of about half an hour, and following the quarrel, the accused had attacked the deceased. Thus, it would be quite evident that there was sudden provocation due to the quarrel, and in that, the appellant/accused had acted so. It is pertinent to point out that there is nothing to show that there was either any premeditation or planned act. In view of the evidence available, it would be fit and proper to state that the act of the accused would not fall within the ambit of murder. At

the same time, it has to be stated that he should have got the knowledge that such bodily injuries inflicted by him, are likely to cause death, and thus, the act of the accused has got to be termed as "culpable homicide not amounting to murder". Therefore, the appellant/accused is entitled to the benefit of exception 4 to Sec.300 of I.P.C., and he is liable to be punished under Sec.304 (Part I) of I.P.C. The Court is of the considered opinion that awarding of 7 years Rigorous Imprisonment would meet the ends of justice.

8. So far as P.Ws.1 and 2 are concerned, there is ample evidence to show that the appellant/accused attacked them and caused simple injuries with the use of a knife, and the wound certificates in their regard have also been marked. The lower Court has awarded one year Rigorous Imprisonment for the offence under Sec.324 of I.P.C. (two counts), which has got to be sustained. Accordingly, the judgment of the lower Court in that regard is sustained.

9. For the reasons stated above, the conviction of the appellant/accused under Sec.302 of I.P.C. is set aside, and instead, he is convicted under Sec.304 (Part I) of I.P.C. and is directed to undergo 7 years Rigorous Imprisonment. Both the punishments should run concurrently. The period already undergone by him, shall be given set off.

10. In the result, with the above modification in conviction and sentence, this criminal appeal is dismissed. It is reported that the appellant/accused is on bail. Hence, the Sessions Judge will take steps to commit him to prison to undergo the remaining period of sentence.

nsv/

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The I Additional Sessions Judge cum Chief Judicial  
Magistrate, Krishnagiri.

<https://hcservices.courts.gov.in/hcservices/>

2.The Principal Sessions Judge, Krishnagiri.

3.The District Munsif cum Judicial Magistrate, Uthangarai.

4.The District Munsif cum Judicial Magistrate, Uthangarai,

5.The Chief Judicial Magistrate, Krishnagiri.

6.The D.G.P. of Police, Chennai.

7..The Superintendent, Central Prison, Vellore.

8.The Public Prosecutor, Madras.

9.The Inspector of Police, Pochampalli Police Station,  
Krishnagiri District.

10.The District Collector, Krishnagiri.

RA (CO)  
DCP/07.07



C.A.No.970 of 1998

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