

BAIL SLIP

The Appellant/Accused namely Velusamy S/O.Chinnimalai Gounder was released on bail vide order dated 25/07/2012 made in CrI.MP.No.1/2012 in CrI.A.No.570/11

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2015

CORAM

THE HON'BLE DR.JUSTICE S.TAMILVANAN

and

THE HON'BLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.570 of 2011

Velusamy

S/o.Chennimalai Gounder

... Appellant/Accused

-vs-

The State represented by
Inspector of Police,
Arachalur Police Station,
Erode District.

Crime No.249 of 2010

... Respondent/Complainant

Criminal Appeal filed under Section 374 of Criminal Procedure Code against the judgment of learned Principal Sessions Judge, Erode District, passed in S.C.No.33 of 2011 dated 18.08.2011.

For Appellant : Mr.I.C.Vasudevan

For Respondent : Mr.V.M.R.Rajentren
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was made by C.T.SELVAM, J.)

This appeal arises against judgment of learned Principal Sessions Judge, Erode District, passed in S.C.No.33 of 2011 on 18.08.2011, convicting the appellant/accused for offence u/s.302 IPC and sentencing him to undergo life imprisonment and fine of Rs.5,000/- i/d 6 months R.I.

2. The case of the prosecution is that on 29.06.2010, both accused and deceased had consumed liquor at the TASMAL shop, Vadapalani, Chennai. Since they were in an inebriated state, PW-4 (Saravanan) took them outside the shop where both fell asleep. In the wee hours, appellant/accused, picked up a quarrel with the deceased as he suspected that the deceased had taken Rs.1,030/- from his pocket. He threw a stone on the deceased's head and caused his death.

3. PW-1, Village Administrative Officer, preferred Ex.P1, complaint, on 30.06.2010 at about 08.30 a.m., before PW-18, Inspector of Police, Arachalur Police Station, who registered a case in Crime No.249 of 2010 for offence u/s.302 IPC. Ex.P21 is the printed First Information Report. He forwarded Ex.P21 to learned Judicial Magistrate II, Erode, at about 09.00 a.m. and took up investigation on the same day. He went to the scene, wherein PW-3 and PW-19 identified the deceased. He prepared Ex.P3, observation mahazar and Ex.P22, rough sketch, in the presence of PW-8 and another. He caused MO-14 series, photographs, to be taken by PW-13. PW-18 forwarded Ex.P21, First Information Report, to the Finger Print and Dog Squad Departments. He conducted inquest on the body of the deceased in the presence of witnesses and panchayatdars, between 10.30 a.m. and 2.00 p.m. The inquest report is Ex.P23. He examined witnesses and recorded their statements. After completion of inquest, he sent the body to Erode Government Hospital, through PW-16, Head Constable, for post-mortem. PW-14, Doctor, conducted post-mortem. The post-mortem report, Ex.P8, reads thus:

"POST-MORTEM CERTIFICATE

Regarding the body of a male aged about 60 years, named Arumugam. Requisition received at 3.10 a.m. on 30.06.2010 from the Inspector of Police of Arachalur Police Station with his letter No.249 of 2010 dated 30.06.2010. Body incharge of Police Constable No.1060 named Mr.Kaliyappan. Identification and Caste Marks:

- (1)ABM over right side of Abdomen
- (2)ABM over right shoulder

The body was first seen by the undersigned at 3.30 p.m. on 30.06.2010.

Its condition then was Rigor Mortis present in all four limbs.

Post-mortem commenced at 3.30 p.m. on 30.06.2010. Appearances found at the post-mortem. - Body of 60 year old male lying on its back with mouth partially opened. Tongue within the mouth and jaw deviated to the left.

External Injuries:

1. Laceration 2x1x1 cm over left eye brow, reddish
2. Bleeding through the left ear (x)
3. Contusion 4 x 3 cm just below the right clavicle
4. # Dislocation of right side of mandible ramus
5. # of mandible just to the right of the chin

Internal examination: Ribs intact @ lung 450 gm (L) lung 400 gm pale. Heart weighs 250 gms c/s empty. Hyoid preserved. Stomach contains 50 ml of undigested food particle, liver 1200 gms pale. Spleen - 120 gms pale. Both kidney weighs 180 gms pale. Bladder - empty. SKULL - Depressed # of right frontal bone. # Base of skull present. Brain 1400 gms pale. OPINION PENDING VISCERA, BLOOD & HYOID Analysis deceased would appear to have died 18 - 20 hours prior to autopsy."

In continuation of investigation, PW-18, collected blood stained stone [M.O.1], blood stained earth [M.O.9], sample earth [M.O.10], a pair of slippers [M.O.11], pieces of blood stained bricks [M.O.12] and a gunny bag [M.O.12] in the presence of PW-4 and another. The seizure mahazar is Ex.P4. He examined PW-4 and one other and recorded their statements. Thereafter, he proceeded to the mortuary at Erode Government Hospital at 03.30 p.m. and exhibited Mos.1 and 2 to PW-14, Doctor. He examined PW-3, who was waiting outside the mortuary and recorded his statement. At 06.30 p.m., he examined PW-2 at the Vadapalani bus stop and recorded his statement. He went to the TASMACH shop at about 07.00 p.m., examined PWs.6, 7 and one other and recorded their statements. He went to the police station at 10.00 p.m. and recovered cash of Rs.1,030 [M.Os.7 and 8] handed over by PWs.4 and 5, under Form-95 [Ex.P24]. He examined PW-4 and recorded his statement. At 11.30 p.m., he collected a lungi, blood stained T-shirt, waist chord and trouser [M.Os.3 to 6] from PW-16, Head Constable, under Form-95 [Ex.P25] and obtained the signatures of the witnesses. On 01.07.2010, he went in search of the accused along with PWs.4 and 9. He arrested the accused at Chennimalai at 04.15 p.m. and recorded his confessional statement. On the basis thereof, he took the accused to his house and recovered a blood stained dhoti [M.O.13] in the presence of witnesses. The seizure mahazar is Ex.P7. The admissible portion of the confession statement is Ex.P6. At 06.30 p.m., the accused identified the place of

occurrence. He took the accused to the police station, wherein, the accused identified MOs.1 and 2. He examined PWs.5, 9, 10, 12 and one other and recorded their statements. He sent a requisition for chemical analysis under Exs.P12 and 16. Ex.P14 is the Chemical Analysts Report. He examined PWs.4, 6 and one other and recorded their statements. He forwarded the accused and the case properties to Judicial Magistrate II, Erode. On 20.07.2010, he examined and recorded the statement of PW-16, Head Constable. On 30.10.2010, he examined PW-13, photographer and recorded his statement. He examined PW-14, Doctor who conducted post-mortem and recorded her statement. Upon completion of investigation, he filed charge sheet informing commission of offences u/s.302 IPC.

4. To substantiate its case, the prosecution examined, PWs.1 to 19, marked Ex.P1 to P25 and MOs.1 to 15. None were examined on the side of the defence nor were any exhibits marked. On questioning u/s.313 Cr.P.C., the accused denied the charges.

5. On appreciation of evidence, finding the appellant guilty of offence under Section 302 IPC, the trial Court convicted the appellant to life imprisonment and imposed fine of Rs.5,000- i/d 6 months R.I. Against his conviction and sentence, the appellant is before this Court with this Criminal Appeal.

6. Learned counsel for appellant submitted that the complaint [Ex.P1] had been preferred by PW-1, Village Administrative Officer, to PW-18, investigating officer and the same informed that the deceased was lying with head injuries in front of a TASMACH shop at Vadapalani, Chennai. According to the prosecution, the sole eye witness to the occurrence, which allegedly took place at about 0.30 a.m. on 30.06.2010, was PW-4. PW-4 was a menial at the TASMACH shop, who had been sleeping inside the shop and who allegedly had gone out to answer the call of nature and chanced upon the occurrence. PW-4 had spoken to going back to sleep and that he had left the shop at 06.00 a.m. informing his brother PW-7 of going to see the owner of the shop. He had spoken to informing the shop owner at 08.00 p.m. on 30.06.2010. The evidence of PW-4 informs most unnatural conduct. Learned counsel further submitted that while PW-4 had spoken to receiving a sum of Rs.1,030/- belonging to the accused from PW-6, Cashier of the TASMACH shop and of going over to the police station and handing over the same to PW-18, investigating officer, at 10.00 p.m., the evidence of PW-7 was to the effect that PW-4 was present at the place of occurrence and that he was examined by PW-18 even at 09.45 a.m. on 30.06.2010 and it was then that a sum of Rs.1,030/- was handed over by PW-4 to PW-18. PW-14, Doctor, had deposed to the possibility of the deceased having met his death owing to falling upon a stone in drunken state. In the circumstances, the arrest of the accused and

seizure of a blood stained dhoti [M.O.13] under Ex.P7, were of no relevance.

7. Heard learned Additional Public Prosecutor on the above submissions.

8. We have considered the rival submissions and perused the materials available on record.

9. We are of the view that the prosecution case is most artificial. The evidence of PW-4 belies normal human conduct. It is most unnatural to inform that after having witnessed the occurrence, he quietly had gone back to sleep and that he had left the shop premises the next morning at 06.00 a.m. When his brother PW-7 and another were lying asleep in the shop, normal human conduct would require him to immediately inform the occurrence. It is the prosecution story that PW-9 had noticed moneys belonging to the accused having fallen out/falling out from his pocket and having informed the same to persons in the shop. PW-4 had collected and handed over the money in a sum of Rs.1,030/- to PW-6, Cashier. If so, upon witnessing the quarrel over the said sum between the accused and the deceased, normal conduct would impel one to inform the rival parties not to fight over the same since the money safely was held by PW-6. PW-4's evidence also is to the effect that police action followed on a written complaint preferred by him. If so, the original First Information Report stands suppressed. For the aforesaid reasons, we would discard the prosecution theory of PW-4 being a witness to the occurrence. Once that is done, we are left with the admission of PW-10, Doctor, to the effect that the deceased could have met his death owing to falling upon a stone in drunken state. The viscera report [Ex.P18] informs thus:

- " 1. Stomach and its contents.
Detected two hundred and ninety nine (299) mg. of ethyl alcohol but not other poison.
2. Intestine and its contents.
Detected two hundred and forty four (244) mg. of ethyl alcohol but not other poison.
3. Liver.
Detected two hundred and eighty one (281) mg. of ethyl alcohol but not other poison.
4. Kidney.
Detected two hundred and sixty seven (267) mg. of ethyl alcohol but not other poison."

The post-mortem report [Ex.P8] informs that the deceased aged 60, suffered fracture of the right frontal bone, fracture and dislocation of the right mandible and base of skull, axiomatically indicative of his having fallen flat on his face. Only truth we find in the evidence of witnesses is regards the drunken state of the deceased since the viscera report [Ex.P18] confirms that he was well and truly drunk. For the rest, the prosecution case is false and the hypothesis of death having been occasioned owing to a drunken fall is quite in keeping with the attendant facts and circumstances. The deceased was not a victim of the accused. The honour would go to TASMAL.

This Criminal Appeal, accordingly, is allowed. The conviction and sentence imposed on appellant/accused by trial Court, are set aside. He is acquitted of the charges. He is directed to be set at liberty forthwith, unless his custody is required in connection with any other case. The bail bond(s), if any executed by him, shall stand cancelled. The fine amount, if paid by him, shall be refunded.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gm

To

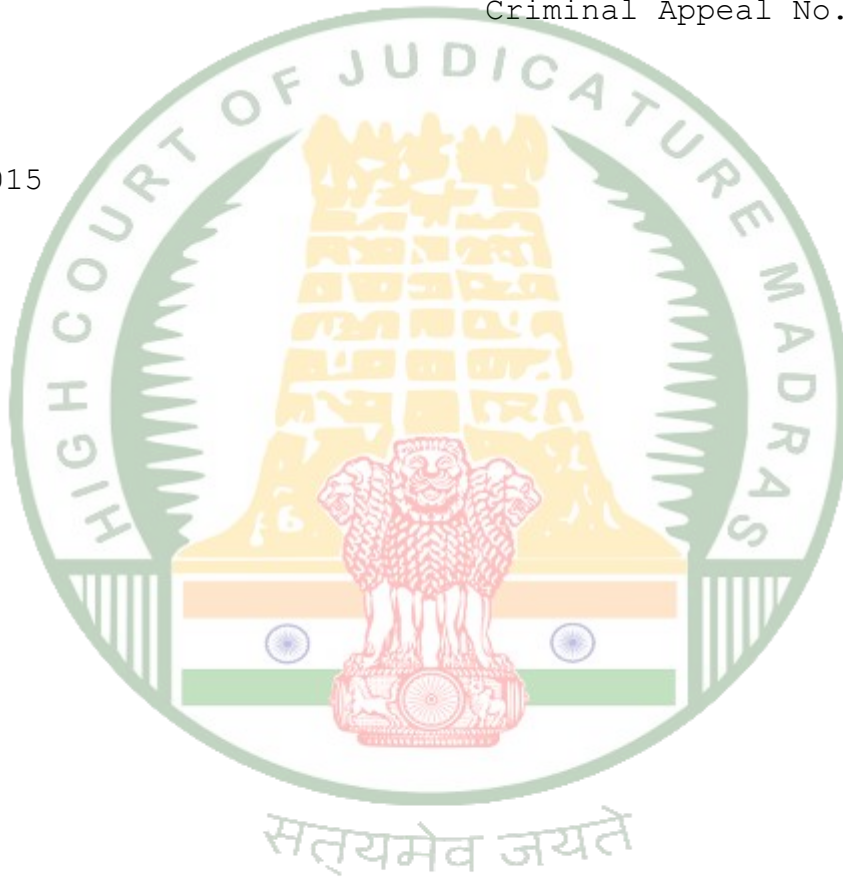
- 1.The Principal Sessions Judge,
Erode District.
- 2.The Judicial Magistrate No.II Erode
- 3.-do-Thro'The Chief Judicial Magistrate Erode
- 4.The Superintendent Central Prison, Coimbatore
- 5.The Inspector of Police,
Arachalur Police Station,
Erode District.
- 6.The District Collector Coimbatore
- 7.The Director General of Police, Mylapore
Chennai-4

8.The Public Prosecutor,
High Court, Madras.

+1 cc to M/S.I.C.Vasudevan Advocates sr.51175

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