

BAIL SLIP

The Appellant/Accused namely Ramadass, S/o.Govindasamy was directed to be released on bail as per order dated 30.07.2012 in Crl.MP.No.2 of 2012 in Crl.A.No.771 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND
THE HONOURABLE MR.JUSTICE C.T.SELVAM

CRL.A.No.771 OF 2011

Ramadass

... Appellant/Accused-1

Vs

The State rep. by
Inspector of Police
Valathy Police Station,
Villupuram District.

... Respondent/Complainant

PRAYER: This Criminal Appeal is preferred under Section 374(2) of Criminal Procedure Code against the judgment dated 24.11.2011 made in Sessions Case No.117 of 2010 on the file of the Additional District and Sessions Judge, Fast Track Court No.1, Tindivanam, Villupuram District.

For Accused/appellant : Mr.V.Gopinath, Senior Counsel
for Mr.S.Suresh

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

JUDGMENT

[Judgment of the Court was delivered by S.TAMILVANAN, J.]

The Appellant/A1 stands convicted for the offence punishable under Section 294(b) IPC and sentenced to undergo imprisonment for three months and for the offence under Section 302 IPC, he was convicted and sentenced to undergo imprisonment for life and the sentence was ordered to run concurrently by the judgment of the learned Additional District and Sessions Judge, Fast Track Court No.1, Tindivanam in S.C.No.117 of 2010 dated 24.11.2011. Challenging the said conviction and sentence, the appellant/A1 has come forward with the present appeal.

2. It is an undisputed fact that both the accused were native of Modipattu Village. A2's daughter Menaga, who was given marriage to Elumalai, son of the deceased Ramachandiran. There was frequent wordy quarrel between the husband and wife, on account of his income from his work as mason. Therefore, they shifted their family to Pondicherry and they were residing in a rental house in Pondicherry. On 12.05.2009, there had been a quarrel between the said Menaga and her husband Elumalai and hence, she went to her parental home without informing the same to her husband. On 14.05.2009, at about 5.30 a.m., A1 with wreeper stick went along with A2 to the farm house, where the said Elumalai, his father, the deceased Ramachandiran and his wife Banumathi were residing, there A2 asked about his daughter's life problem and assaulted him on his left head, left cheek and left side neck by Wreeper Stick. On account of the injuries sustained the said Ramachandran was admitted in Government Hospital, Pondicheery on 14.05.2009 at 6.40 p.m. and in the course of treatment, he died.

3. When the accused was questioned u/s.313 Cr.P.C., in respect of the incriminating circumstances appearing against him, based on the evidence adduced by the prosecution, the accused denied each and every circumstances as contrary to the facts and stated that he has been falsely implicated in the case. In order to establish the prosecution case against the appellant and another, the prosecution examined witnesses PWs.1 to 15, marked Exs.P1 to P20 and MOs 1 and 6 and on the defence side, D.W.1 was examined.

4. Upon consideration of the oral and documentary evidence, the Trial Court acquitted A2 u/s. 235(1)Cr.P.C. for

the offence u/s.302 IPC, however, convicted the appellant / first accused and sentenced him as stated supra. Aggrieved by the judgment of conviction and sentence imposed on the appellant/A1, he has preferred the present appeal.

5. Mr.V.Gopinath, learned Senior Counsel appearing for the appellant / A1 argued that there could be earlier FIR registered that has been suppressed by the prosecution for the reasons best known to them. The learned Senior Counsel also drew the attention of this Court to the evidence of PWs. 1, 5 and 6 wherein they have categorically stated that after the occurrence, the deceased was taken to the Jipmer hospital, Pondicherry for treatment where the police enquired and recorded the statement of the deceased Ramachandran, PW1 and the other witness Baskar. However, as per the present FIR, marked as Ex.P1, the said statements were not recorded. As per the prosecution case, the compliant Ex.P1 was given only by PW1 on 15.05.2009, for which, an endorsement was also made on 15.05.2009 at 7.00 a.m.

6. As contended by the learned Senior Counsel appearing for the appellant, we are of the view that Ex.P1 could not be the first information given to the police, based on which, the FIR was registered. It is strange to note that as to why the statement that had been obtained from the deceased was not brought to light and why the case was not registered on 14.09.2009 itself.

7. It is an admitted fact that the injuries sustained and the treatment given, generally would be entered into the Accident Register, which is maintained by the Hospital. But, copy of the Accident Register was not produced and marked for the reasons best known to the prosecution. It is the Session Case and that too a case registered under Section 302 IPC. The case could have been registered based on the facts and circumstances on 14.09.2009 itself under Section 307 and after the death of the deceased, the case could have been altered into Section 302 IPC. According to the learned Senior counsel for the appellant, the case was registered straight-away under Section 302 IPC after the death of the Ramachandran on 15.09.2009, suppressing the facts that the deceased had given an earlier statement, which is improper and an illegal procedure, being followed by the prosecution to suit their convenience. We do not know what is the reason for the Investigating Officer for not registering the case immediately, though they had recorded the

statement of the deceased and other witnesses on 14.5.2009 itself, in the hospital, as spoken to by the prosecution witnesses.

8. According to the learned Senior Counsel for the appellant, originally the said Ramachandran was taken to Jipmer hospital and then taken to the Government Hospital, Pondicherry. Therefore, nothing could have prevented the respondent in registering the case based on the statement of the deceased or statement given by any eye-witness available at the Jipmer Hospital. They need not wait till the injured was taken to the Government Hospital, Pondicherry and wait till his death, so as to register the case directly under Section 302 IPC.

9. It is well settled in various decisions of the Hon'ble Supreme Court and the High Courts including this Court that when there is delay in registering the FIR, it would be fatal to the prosecution case, unless the same is satisfactorily explained. In this case, the prosecution has not satisfactorily explained the delay for not registering the case, after the occurrence on 14.09.2009. It is brought to the notice of this Court about the unhealthy and improper procedure adopted in registering the case directly under Section 302 IPC, ignoring the statement obtained from the deceased by the respondent and further, on verifying the postmortem certificate, we could see that injuries were found on the body of the deceased and the viscera report received by the police was also not marked. In Sessions Cases, marking of Viscera report is mandatory, which would decide whether the deceased had consumed alcohol or not and on a perusal of the postmortem certificate, which reveals the following conditions of the body and the injuries found on the deceased:

External condition: Well developed and moderately nourished adult male. Eyes are congested. Finger nails are bluish.

External Injuries: An oblique contusion of 6cms x 4cms, over the outer aspect of left for-arm.

Internal Injuries: 1.Surface vessels congested and edematous.
2.A diffuse bruising of 10cms x 8cms, over the left temporal area in the scalp
3.Bilateral, diffuse, subdural and sub arachnoid hemorrhages over brain.

10. The Viscera Report was not produced and marked and the material facts were suppressed by the prosecution. All the records pertaining to the treatment given to the deceased in the hospital were also not produced. The FIR subsequently registered on 15.05.2009 was sent through a Constable, however, he was not examined on the side of the prosecution as one of the witnesses for the reasons best known to the prosecution. The complaint for registering the FIR was given by PW1 in writing and PW14 has stated that it was the written complaint received from PW1. However, PW1 has stated in his deposition that he could not read or write and according to him, his oral statement was reduced into writing and who actually wrote the complaint is not brought to light. Therefore, it was also a contradictory version on the side of the prosecution in respect of lodging the complaint. The suppression of vital earlier information received by the police and the FIR recorded only on the next day after the death of the deceased Ramachandran and the vital contradiction available would show that the prosecution has not established the alleged guilt beyond reasonable doubt against the appellant/A1.

11. Based on the vital aspects of the evidence available on record, we are of the considered view that the appellant/accused is entitled to benefit of doubt and hence, the appeal has to be allowed and the conviction and sentence imposed by the trial Court is liable to be set aside.

12. In the result, the appeal is allowed and the conviction and sentence imposed by the trial Court is set aside. The fine amount if any paid by the appellant-accused is ordered to be refunded.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

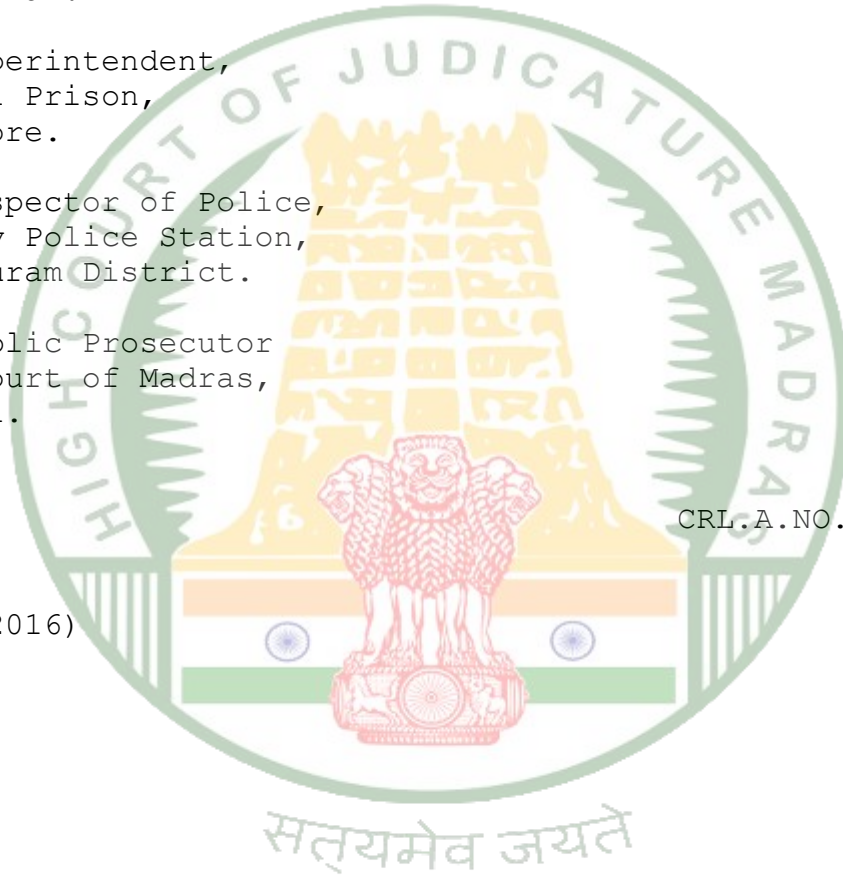
kal / tsvn

To

1. The Additional District & Sessions Judge,
Fast Track Court I,
Tindivanam, Villupuram.
2. The Judicial Magistrate,
Gingee.
3. Do Through The Chief Judicial Magistrate,
Villupuram.
4. The Superintendent,
Central Prison,
Cuddalore.
5. The Inspector of Police,
Valathy Police Station,
Villupuram District.
6. The Public Prosecutor
High Court of Madras,
Chennai.

KK (CO)
CA (29/01/2016)

CRL.A.NO.771 OF 2011



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