

BAIL SLIP

The Appellant/Accused was directed to be released on bail in and by the order of this Court dated 9.3.2007 made in M.P.No.1/2007 in CrI.A.No.246 of 2007 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.246 of 2007

Mohan

... Appellant/Accused

vs.

State by:
Inspector of Police,
Reddichavadi Police Station
Reddichavadi,
Cuddalore District

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment and conviction made in S.C.No.395 of 2005 dated 20.02.2006 on the file of the Principal District Sessions Judge, Cuddalore Division, Cuddalore.

For appellant : Mr.S.N.Arunkumar for
Mr.N.Balakrishnan

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

Challenge in this appeal is to the conviction and sentence dated 20th day of February 2006 passed in Sessions Case No.395 of 2005 by the Principal District and Sessions Court, Cuddalore.

2. The schema of the case of the prosecution is that the accused and the deceased, namely Mohan and Dhananjayan are friends. On 30.4.2006 at about 6 p.m, the accused has taken the deceased to a toddy shop by way of saying that he is having sufficient money to purchase. In previous occasion, a miff has arisen in betwixt them with regard to supply of toddy and on their way to toddy shop with intention to murder the deceased, the accused has attacked him by using a stone and thereby caused fatal injuries on his person and

subsequently the deceased has been admitted in hospitals. On 3.5.2005, the deceased has succumbed to injuries. After occurrence, the brother of the deceased, by name, Dhavachelvan has given a complaint and the same has been registered in Crime No.124 of 2005. The complaint alleged to have been given by the defacto complainant has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the investigating officer, viz., P.W.15 has taken up investigation, examined connected witnesses and also made arrangements for conducting autopsy on the body of the deceased. The Doctor, by name Chandrasekar (P.W.13) has conducted autopsy and he found the following external and internal injuries:

External Injuries: (Ante-mortem)

Multiple small superficial abrasion present on left hand, left knee, right knee and right ankle.

Sutured wound left parietal region of scalp 3 cm in length. On dissection of the wound, margins of the wound are irregular.

Internal Examination:

Contusion present on left parietal region scalp

A film of sub arachnoid hemorrhage present all over the brain.

Brain sedematous.

The post-mortem certificate has been marked as Ex.P.10.

4. The successor in office of P.W.15, by name Sundaravadivelu has conducted further investigation, examined further witnesses and after completing the same, laid a final report on the file of Judicial Magistrate Court No.1, Cuddalore and the same has been taken on file in P.R.C.No.9 of 2005.

5. The Judicial Magistrate No.1, Cuddalore, after considering the fact that the offence alleged to have been committed by the accused is triable by Sessions Court, has committed the case to the Court of Sessions, Cuddalore Division and the same has been taken on file in Sessions Case No.395 of 2005.

6. The trial court, after hearing both sides and upon perusing relevant documents has framed a charge against the accused under Section 302 of the IPC and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

7. On the side of the prosecution, P.Ws.1 to 16 have been examined and Exhibits 1 to 18 and Material Objects 1 to 5 have been marked.

8. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been let in on the side of the accused.

9. The trial court, after hearing the rival arguments put forth on either side and also after perusing the relevant records, has found the accused guilty under Section 304 Part-II of the IPC and sentenced him to undergo 7 years Rigorous Imprisonment and also imposed a fine of Rs.2,000/- with usual default clause. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellant.

10. The learned counsel appearing for the appellant has raised the following points so as to topsy-turvy the conviction and sentence passed against the appellant/accused:

(A) After occurrence, the then injured has been initially taken to a private hospital and P.W.8 has given treatment to him and the defacto complainant has reported him that the then injured has fallen down and thereby sustained injuries and likewise he made the very same statement to P.W.14 Doctor, who admitted the then injured in Government Hospital, Pondicherry. Since P.W.1, the defacto complainant has not stated the actual occurrence, the case of the prosecution is liable to be thrown out.

(B) The alleged occurrence has taken place on 30.4.2005, whereas Ex.P.1 complaint has come into existence on 2.5.2005. The prosecution has failed to explain such huge delay and on that ground also, the case of the prosecution is liable to be rejected.

(C) In Ex.P.1, the complaint, it has been clinchingly stated to the effect that prior to occurrence, P.W.1 along with the deceased and accused has proceeded to toddy shop, whereas P.W.1 has given entirely a different evidence and on that score also, the case of the prosecution is liable to be rejected.

11. In order to sustain the conviction and sentence passed by the trial court, the learned Additional Public Prosecutor has contended that in the instant case, the brother of the deceased has been examined as P.W.1, the wife, sister and mother of the deceased have been examined as P.Ws.2 to 4 and all of them cogently stated in their evidence that in the place of occurrence, the accused has attacked the deceased and further P.W.5, the Mahazar witness has stated to the effect that he has seen P.Ws.1 to 4 and deceased in the place of occurrence and further the evidence given by P.Ws.1 to 4 has been clearly corroborated by the Doctor (P.W.13, who conducted autopsy) and the trial court, after considering the enormous evidence

available on record, has rightly invited conviction and sentence imposed against the appellant/accused under section 304 Part-II of Indian Penal Code and therefore, the conviction and sentence passed by the trial court are not liable to be set aside.

12. Basing upon the divergent submissions made on either side, the Court has to analyze as to whether the prosecution has proved the guilt of the appellant/accused under section 304 Part-II of Indian Penal code even without a speck of doubt. The consistent case put forth on the side of the prosecution is that on 30.4.2005 at about 6 p.m., under the guise of supplying toddy, the accused has brought the deceased from his house and on their way to toddy shop with an intention to murder him, he attacked him by using a stone and thereby caused fatal injuries on his person and due to the alleged overt act of the accused, the deceased has passed away on 3.5.2005.

13. As rightly pointed out on the side of the prosecution, the author of Ex.P.1, the defacto complainant, has been examined as P.W.1. The wife, sister and mother of the deceased have been examined as P.Ws.2 to 4.

14. It is not an exaggeration to say that P.Ws.1 to 4 have given consistent, cogent and trustworthy evidence to the effect that in the place of occurrence, the accused has attacked the deceased by using a stone and thereby caused fatal injuries on his person.

15. In fact, this Court has groped the entire evidence given by P.Ws.1 to 4 and no contradictions are available in between their evidence and therefore, their evidence can be accepted in toto.

16. The Doctor, who conducted autopsy, has been examined as P.W.13 and his specific evidence is that the deceased would have sustained injuries as spoken by the prosecution. Therefore, it is quite clear that the evidence given by P.Ws.1 to 4 has been encrusted by P.W.13.

17. The first and foremost contention put forth on the side of the appellant/accused is that twice P.W.1 has reported that the deceased has fallen down and thereby sustained injuries. It is true that both to P.Ws.8 and 14, it is reported that the deceased has fallen down and thereby sustained injuries. In fact, even in the chief examination of P.W.1, it has been clearly stated that the doctors would not have given treatment, if he or anybody has divulged the real state of affairs. Under the said circumstances, it is stated to the effect that the deceased has sustained injuries due to falling down and that itself is not a sufficient ground so as to reject the contents of Ex.P.1 and also the evidence given by P.Ws.1 to 4. Therefore, the first and foremost contention on the side of the appellant/accused, has no merit.

18. The second contention put forth on the side of the appellant

is that even though the occurrence has taken place on 30.4.2005, Ex.P.1, complaint, has come into existence on 2.5.2005 and the prosecution has failed to explain such delay and therefore, the case of the prosecution is liable to be rejected.

19. It is an admitted fact that the occurrence has taken place on 30.4.2005. Further, it is seen from the records that P.Ws 1 to 4 and other relatives have made their level best so as to save the life of the deceased, but at last, P.W.1, the defacto complainant, has given Ex.P.1. From the available evidence on record, the Court can deduce that only with an intention to save the life of the deceased, P.W.1 and others have made their attempts and such delay has occurred in lodging FIR and that itself cannot be a basis for rejecting the case of the prosecution.

20. The third contention put forth on the side of the appellant/accused is that in Ex.P.1, it has been clinchingly stated to the effect that prior to occurrence, P.W.1, the then injured and accused have proceeded towards toddy shop, whereas P.W.1 has given evidence to the effect that he and others have followed the accused and the then injured and that itself is sufficient for rejecting the case of the prosecution.

21. It is seen from the records that in Ex.P.1, it has been stated to the effect that P.W.1, the then injured and the accused have joined together and then proceeded towards toddy shop, whereas in his evidence, he has deposed to the effect that after some time, he followed both the accused and deceased and that itself cannot be a basis for disbelieving the case of the prosecution. Therefore, viewing from any angle, the contentions put forth on the side of the appellant/accused cannot be accepted.

22. The trial court, after considering the overwhelming evidence available on record, has rightly found the appellant/accused guilty under section 304 Part II of Indian Penal Code. In view of the foregoing elucidation of factual aspects, this Court has not found any error nor illegality in the conviction passed by the trial court.

23. Now, the Court has to analyze the quantum of punishment. It is seen from the records that the appellant is aged about 35 years at the time of occurrence. Further, he is having a family. Considering the age of the accused and also his family condition, this Court is of the considered view to take leniency in awarding sentence as stated infra:

In fine, this Criminal Appeal is allowed in part. The conviction passed in Sessions Case No.395 of 2005 by Principal District and Sessions Court, Cuddalore is confirmed, but the quantum of sentence

imposed by the trial court is modified as follows:

"The appellant/accused is sentenced to undergo five years rigorous imprisonment instead of 7 years rigorous imprisonment and no modification in fine amount. If the appellant/accused is not in custody, the trial court is directed to take appropriate steps so as to immure him in prison to serve out the remaining period of sentence."

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

ajr

To :

- 1.The Principal District Sessions Judge,
Cuddalore Division, Cuddalore.
 2. The Inspector of Police,
Reddichavadi Police Station
Reddichavadi,
Cuddalore District
 3. The Public Prosecutor
High Court, Chennai.
 - 4.The Judicial Magistrate, No.I,
Cuddalore.
 - 5.-Do- Thro The Chief Judicial Magistrate,
Cuddalore.
 - 6.The Superintendent, Central Prison, Cuddalore.
- Copy to:The Section Officer, Criminal Section, High Court, Madras.
- 1 cc to Mr.M.N.Balakrihnan , Advocate Sr.No.46713/15

Crl.A.No.246 of 2007

ak(co)
pmk.23.9.2015