

BAIL SLIP

The Appellant herein / Accused viz., Sambar @ Shanmugam was released on Bail in M.P.No.1 of 2007 in CrI.A.No.743 of 2007 dated 14.08.2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.743 of 2007

Sambar @ Shanmugam

... Appellant/Accused

Vs.

The State

Rep. By the Inspector of Police,

Karunkalpalayam Police Station

Erode, Erode District

Crime No.651/2004

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment and conviction made in Special S.C.No.141 of 2006 dated 05.02.2007 on the file of the Principal District Special Sessions Judge, Erode.

For appellant : Mr.S.N.Arunkumar

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

JUDGMENT

The conviction and sentence dated 05.02.2007 passed in Sessions Case No.141 of 2006 by the Principal District and Special Sessions Judge, Erode are being challenged in the present Criminal Appeal.

2. The crux of the prosecution is that on 25.11.2004, at about 6.30 p.m., in Annai Sathya Nagar, P.P.Agraharam, Erode in front of Mariyamman Kovil, due to miff occurred in between the accused and deceased, the accused has jugulated the deceased and thereby, caused suffocation and due to his overtacts, the deceased has had instantaneous death. After occurrence, one Palaniammal, mother of the deceased has given a complaint in Karunkalpalayam Police Station and the same has been registered in Crime No.651 of 2004 under Section 302 of the Indian Penal Code (hereinafter called as "IPC") and also under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter called as "SC and ST Act"). The complaint alleged to have been given by the mother of the deceased has been marked as Ex.P.1.

3. On receipt of Ex.P.1, P.W.16, the Inspector of Police has taken up investigation, examined the connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, the Doctor by name KanakasalaKumar (P.W.10) has conducted Post Mortem and he found the following external and internal injuries:-

"External Injuries:-

(1) Abrasion 4 x ½ cm length over Left side of Neck 5 cm below angle of (L) side Mandible.

(2) Abrasion ® side neck 1 x ½ cm size, 2 cm below Right side of Angle of Mandible. On Deep Dissection of Injury(1), the underlying subcutaneous tissues and muscles are contused and blood clots present in the muscle. On D.D., of Injury(2), the underlying subcutaneous tissues are congested.

Thorax: Heart 150 gms Chambers empty; Lungs ® 400 gms; (L) 350 gms congested (Both); Trachea congested; Hyoid bone preserved for HPE; Stomach contains about 200 gms of partially digested food particles; Liver 900 gms congested; Spleen 150 gms congested; Kidneys both 200 gms congested; Bladder empty Brain 150 gms; Spinal Column Intact. The deceased would appear to have died about 12 - 18 hours prior to Antopsy."

4. The Post Mortem Certificate has been marked as Ex.P.7. After transfer of P.W.16, his Successor in Office viz., P.W.18 has conducted further investigation and after completing the same laid a final report on the file of the Judicial Magistrate Court No.I, Erode and the same has been taken on file in P.R.C.No.2 of 2005.

5. The Judicial Magistrate No.1, Erode, after considering the facts has found that the offences alleged to have been committed by the accused are triable by Sessions Court committed the case to the Court of Sessions, Erode Division and the same has been taken on file in Special Sessions Case No.141 of 2006.

6. The trial court, after hearing both sides and upon perusing relevant records has framed a charge against the accused under Section 302 of the IPC r/w.3(2)(v) of the SC and ST Act 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 18 have been examined and Exhibits 1 to 22 have been marked and Material Objects 1 to 3 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 adduced on the side of the accused.

9. The trial court, after hearing both sides and also evaluating the available evidence on record has found the accused guilty under Section 304(2) of the IPC and sentenced him to undergo 7 years Rigorous Imprisonment and also imposed a fine of Rs.500/- 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 sum and substance of the case of the prosecution is that due to sudden quarrel that occurred in between the accused and deceased in the place of occurrence, the accused has jugulated the deceased and due to his overtacts, the deceased has had instantaneous death.

11. The entire case of the prosecution hinges upon Ex.P.1. Ex.P.1 is the complaint alleged to have been given by the mother of the deceased, wherein, it has been clearly stated to the effect that in the place of occurrence, the accused has attacked the deceased. The author of the complaint/Ex.P.1 has been examined as P.W.1 and other eye witness by name Perumayi, sister of the deceased has been examined as P.W.2 and their specific evidence is that in the place of occurrence, the accused has attacked the deceased.

12. It is seen from the records that the deceased has had instantaneous death and immediately after occurrence, he has been taken to P.W.6-Dr.Razik Farith and subsequently, the deceased has been referred to Government Hospital, Erode, wherein, it is found that he has already passed away.

13. The doctor, who conducted autopsy has been examined as P.W.10 and marked Ex.P.7-Post Mortem Certificate, wherein, it has been clearly stated that the death of the accused would have occurred due to alleged overtacts committed by the accused and P.W.10 has also given clear evidence to that effect.

14. It has already been pointed out that witnesses viz., P.Ws.1 and 2 have given clear evidence to the effect that in the place of occurrence, the accused attacked the deceased. The evidence given by P.Ws.1 and 2 have been clearly corroborated by medical evidence by way of examining P.W.10 coupled with Ex.P.7-Post Mortem Certificate.

15. From the conjoined reading of the evidence given by P.Ws.1, 2 and 10, coupled with Ex.P.7, there is no incertitude in coming to a conclusion that in the place of occurrence, the accused has attacked the deceased and only due to his overtacts, the deceased has had passed away.

16. In order to supplant the conviction and sentence passed against the appellant/accused, the learned counsel appearing for the appellant/accused has raised the following points:-

(a) Both P.Ws.1 and 2 are said to be eye witnesses and with regard to cause of quarrel in between the accused and deceased, contradiction is available in the evidence given by P.Ws.1 and 2 and the trial court has failed to look into the same.

(b) In Ex.P.1, it has been clearly mentioned that apart from P.Ws.1 and 2, some independent witnesses have seen the occurrence, but for the reasons best known to the prosecution, they have not been examined and further P.Ws.1 and 2 are related witnesses and their evidence cannot be looked into.

(c) The occurrence has taken place at about 6.30 p.m., on 25.11.2004, but Ex.P.1 has been registered on the same day at about 11.30 p.m., and the prosecution has failed to explain such delay and that itself is sufficient to reject the case of the prosecution.

17. In order to substantiate the conviction and sentence passed by the trial court, the learned Additional Public Prosecutor has contended that in the instant case, P.Ws.1 and 2, though related to

deceased have given clear evidence to the effect that in the place of occurrence, the accused attacked the deceased and their evidence have been clearly corroborated by P.W.10-the doctor who conducted autopsy on the body of the deceased and the trial court, after considering the plenitude of evidence available on the side of the prosecution has rightly found the accused guilty under Section 304(2) of the IPC and therefore, the conviction and sentence passed by the trial court do not warrant interference.

18. The first and foremost point urged on the side of the appellant/accused is that in between the evidence of P.Ws.1 and 2, slight variation is found place with regard to cause of dispute that occurred in between the accused and deceased.

19. It is true that P.W.2 has given a cause for the dispute that existed in between the accused and deceased, but, P.W.1 has not stated anything about the said cause and the same is nothing but an omission on the part of P.W.1 and therefore, vital contradiction is not available in between the evidence of P.Ws.1 and 2, with regard to occurrence and under the said circumstances, the first point raised on the side of the appellant/accused is of no use.

20. The second point urged on the side of the appellant/accused is that even in Ex.P.1, apart from P.Ws.1 and 2, it has been clearly mentioned that some more persons have witnessed the occurrence, but they have not been examined.

21. It is a settled principle of law that the prosecution is having liberty to examine minimum number of witnesses so as to avoid proliferation of evidence. Further, there is no embargo in law in believing the evidence of related witnesses. Therefore, the second point urged on the side of the appellant/accused is sans merit.

22. The third point urged on the side of the appellant/accused is that even though occurrence has taken place at about 6.30 p.m., on 25.11.2004, Ex.P.1 has come into existence on the same day at 11.30 p.m., and the prosecution has failed to explain the delay.

23. It is seen from the records that immediately after occurrence, for the purpose of saving the life of the deceased, he has been taken to a Private Hospital, where P.W.6 has seen him and subsequently, he has been referred to Government Hospital, Erode. Further, the concerned Police Station is situated 4 kilometers away from the place of occurrence. Therefore, it is very clear that the prosecution has properly explained the delay which occurred in giving

Ex.P.1. Under the said circumstances, the third point urged on the side of the appellant/accused also goes out without merit.

24. It has already been pointed out that the prosecution has clearly established the guilt of the accused punishable under Section 304(2) of the IPC.

25. The trial court, after considering the overwhelming evidence available on the side of the prosecution has clearly found the appellant/accused guilty under the said section.

26. As a residual contention, the learned counsel appearing for the appellant/accused has requested the court for awarding lesser punishment to the appellant/accused.

27. It is seen from the records that the appellant/accused is aged about 33 at the time of occurrence and also having two children. Considering his age and also family circumstances, this Court is of the view to award 5 years Rigorous Imprisonment instead of 7 years Rigorous Imprisonment under Section 304(2) of the IPC and to that effect the criminal appeal is liable to be allowed in part.

28. In fine, this Criminal Appeal is allowed in part. The conviction passed against the appellant/accused in Special S.C.No.141 of 2006 by the trial court is confirmed. But the sentence imposed against him is modified as follows:-

"The appellant/accused is sentenced to undergo 5 years Rigorous Imprisonment instead of 7 years Rigorous Imprisonment and no modification with regard to fine amount imposed by the trial court."

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nvsri

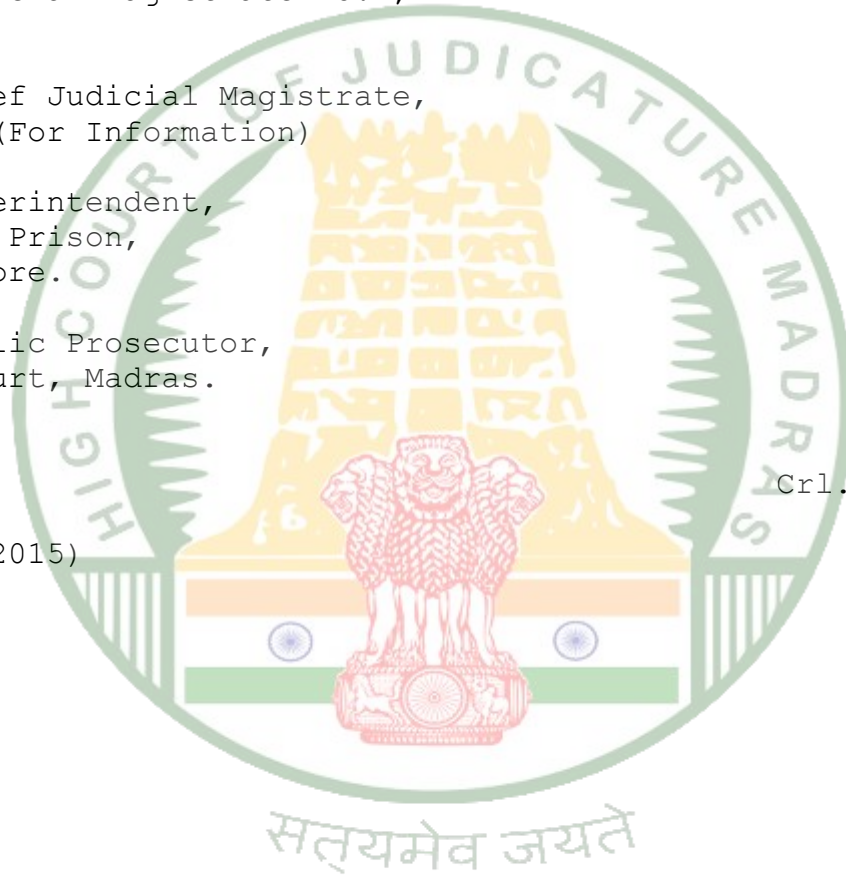
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To

- 1.The Inspector of Police,
Karunkalpalayam Police Station
Erode, Erode District
(Crime No.651/2004)
- 2.The Principal District Special Sessions Judge,
Erode.
- 3.The Judicial Magistrate No.I,
Erode.
- 4.The Chief Judicial Magistrate,
Erode. (For Information)
- 5.The Superintendent,
Central Prison,
Coimbatore.
- 6.The Public Prosecutor,
High Court, Madras.

PUR(CO)
CA(31/08/2015)

Cr1.A.No.743 of 2007



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