

Bail Slip

The Accused namely Viz.Sundar S/O Kasinadar was directed to release on bail, made in HP No.1/2014 in Crl A 140/14, dated 14.10.2014, of this Court.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07..06..2016

CORAM

THE HONOURABLE MR . JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal No.140 of 2014

Sundar

... Appellant/Accused

-Versus-

State Rep. by
The Inspector of Police,
Redhills Police Station,
Thiruvallur District.
[Crime No.225 of 2008]

... Respondent /Complainant

Criminal Appeals filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellants by the learned IV Additional Sessions Judge, Thiruvallur @ Ponneri, Thiruvallur District, in S.C.No.124 of 2011 dated 24.01.2014.

For Appellant

: Mr.A.V.Arun

For Respondent

: Mr.M.Maharaja, APP

JUDGEMENT

(Judgement of the Court was delivered by S.NAGAMUTHU, J.)

The appellant, the sole accused in S.C.No.124 of 2011 on the file of the learned IV Additional Sessions Judge, Ponneri, Thiruvallur District, has come up with this criminal appeal challenging the conviction and sentence imposed by the trial court under Section 302 of IPC to undergo imprisonment for life

and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three months by judgment dated 24.01.2014.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Mr.Ayyakannu. Mr.Ayyakannu was a building contractor. He used to engage the accused to transport the building materials to the work spot in the cart owned by the accused for hire. After some time, the deceased declined to hire the bullock-cart belonging to the accused. The accused was enraged over the same.

3. On 06.05.2008 at about 01.00 p.m., it is alleged that near the shed belonging to the deceased there was a quarrel between the accused and the deceased on account of the above dispute. During the quarrel, it is alleged that the accused kicked the deceased and pushed him down. After the deceased had fallen, it is alleged that, the accused dropped a grinding stone on his head and ran away from the scene of occurrence. The occurrence was witnessed by P.Ws.1 and 3. P.W.1 immediately engaged an auto-rickshaw and took the deceased to a private hospital where the Doctor advised P.W.1 to take the deceased to Stanley Government Medical College Hospital, Chennai. Accordingly, P.W.1 took him to the Stanley Government Medical College Hospital. P.W.14 Dr.Selvaraj, examined the deceased and declared him dead. The body was sent to the mortuary. Ex.P.7 is the accident register which came into being at 02.15 p.m. on 06.05.2008. P.W.14-the Doctor, gave an intimation to the police also.

4. P.W.1, thereafter, went to the Redhills Police Station at 05.30 p.m. on 06.05.2008 and made a complaint. P.W.5, the then Inspector of Police, on receipt of the complaint under Ex.P.1, registered a case in Crime No.225 of 2008 under Section 302 of IPC. Ex.P.8 is the FIR. Then, he forwarded both the complaint-Ex.P.1 and the FIR-Ex.P.8 to the court which were received by the learned jurisdictional Magistrate at 10.30 a.m. on 07.05.2008.

5. In the mean time, taking up the investigation, P.W.15 went to the place of occurrence, prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P9) in the presence of P.W.5 and another witness. He also recovered a grinding stone (M.O.1); some blood stained earth (M.O.2); and sample earth (M.O.3) from the place of occurrence in the presence of the very same witnesses under a mahzar (Ex.P3). Then, He conducted inquest on the body of the deceased at the Stanley Government Medical College Hospital in the presence of the panchayatars between 09.30 and 11.30 p.m. and prepared an inquest report (Ex.P.10). He forwarded the body for postmortem.

6. P.W.13 Dr.V.Tekal, conducted autopsy on the body of the deceased at 12.05 p.m. on 07.05.2008. He found the following injuries:-

"Injuries:-

(1) Brown irregular abrasion 3 x 1-0.5 cms, on the back of lower third of left forearm.

(2) Dark red diffuse bruising on the upper lid of right eye; Dark red sub-conjunctival haemorrhages in the right eye.

(3) Irregular laceration 5.5 x 1 x cavity deep, oblique on the parieto-temporal regions of the scalp, upper end situated 12 cms above the left mastoid process. On dissection: Dark red, scalp deep, diffuse bruising on occipital, both parietal, left temporal and frontal regions of the scalp; comminuted fracture of the calvarium involving the occipital, right and left parietal, left temporal and frontal bones. On opening the calvarium: Thin film of dark red Extradural haemorrhage over frontal, left temporal, both parietal and occipital lobes of brain; Thin film of dark red subdural haemorrhage and diffuse subarachnoid haemorrhage on both the cerebral and cerebellar hemisphere. Ventricles contain fluid blood. Oblique fissure fracture 5 cms on the anterior part of floor of left cranial fossa; comminuted fracture on base of the skull, involving right and left anterior cranial fossa.

There were no other external or internal injuries anywhere on the body.

Heart: Normal in size. C/S-All chambers contain fluid blood; valves are normal, Coronaries are patent, Great vessels are normal.

Lungs: Normal in size; C/S congested.

Larynx and Trachea: Empty. Hyoid bone-Intact.

Stomach: Contained 1200 grams of undigested cooked rice meal. No definite smell.

Mucosa-Congested.

Intestines: contains brown chyme.

Bladder: Empty.

Liver, Spleen and Kidneys: Normal in size. C/S congested.

Pelvis and Spinal column: intact."

Ex.P.6 is the postmortem certificate. He gave opinion that the death was due injuries to the head.

7. During the course of investigation, P.W.15 arrested the accused on the day of occurrence itself at 02.30 p.m. in the presence of P.Ws.4 and 5. On such arrest, the accused gave a voluntary confession in which he disclosed the place where he had hidden a maroon colour shirt and he took the police and the witnesses to the place of hide out and produced the maroon colour shirt with blood-stains (M.O.4). P.W.15 recovered the same under a mahazar (Ex.P4) in the presence of the witnesses. On returning to the police station, he forwarded the accused to the court for judicial remand. P.W.15 also forwarded the material objects to the court along with a request to forward them for chemical examination. On the orders of the learned Judicial Magistrate, the material objects were sent for chemical examination. The chemical analysis report revealed that there were blood stains on all the material objects Except on M.O.3 [sample earth].

8. Based on the above materials, the trial court framed a lone charge under Section 302 of IPC for murder against the accused. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined, 10 documents and 4 material objects were marked.

9. Out of the said witnesses, P.Ws.1 and 3 have spoken about the occurrence. P.W.2 has stated that he saw the accused and the deceased talking together and after some time, he found the deceased with injuries. P.W.4 has spoken about the preparation of the observation mahazar and the rough sketch and also the recovery of material objects in his presence from the place of occurrence. P.W.5 has also spoken about the same.

10. P.W.6 is the wife of the deceased. She has stated that she heard about the occurrence and went to the hospital. P.W.7 has stated about the arrest of the accused and the disclosure statement made by him. He has also stated about the recovery of M.O.4 on the disclosure statement of the accused. P.W.8 has not stated anything incriminating against the accused. P.W.9, the police constable has stated that he took the dead body for postmortem from the hospital to mortuary and then, identified the same to the Doctor for postmortem. P.W.10 has stated that he took the deceased from the place of occurrence to the hospital for treatment in his auto-rickshaw. P.W.11 has stated about the registration of the case, the entire investigation done by him and the filing of charge sheet against the accused.

11. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. he denied the same as false. However, he did not choose to examine any witness nor he did mark any document on his side. His defence was a total denial.

12. Having considered all the above, the trial court convicted and sentenced the accused as detailed in the first paragraph of this judgement. Challenging the conviction and sentences, the sole accused is now before this Court with the present criminal appeal.

13. We have heard the learned counsel appearing for the appellant/accused and the learned Additional Public Prosecutor appearing for the respondent/state and we have also perused the records carefully.

14. In this case, according to the case of the prosecution, the alleged occurrence was at 01.00p.m. on 06.05.2008. It is alleged that P.Ws.1 to 3 saw the accused and the deceased talking to each other near the shed belonging to the deceased. It is the further evidence of P.W.2 that, thereafter, he found the deceased with injuries and it is the evidence of P.Ws.1 and 3 that they found the accused kicking the deceased and dropping a grinding stone on his head. The deceased was thereafter taken to the hospital where at 02.15 itself he was declared dead. But, even thereafter no complaint was made. The complaint is stated to have been made at 05.30 p.m. on 06.05.2008 which is evident from the FIR. But, unfortunately, the FIR had reached the hands of the learned jurisdictional Magistrate only at 10.30 a.m. on 07.05.2008. Absolutely, there is no explanation either for the delay in preferring the complaint or for the delay in forwarding the FIR to the court. The delay is enormous which creates a strong doubt in the case of the prosecution.

15. Apart from the above, if we look into the evidence of P.Ws.1 to 3, as we have already pointed out, P.W.2 has not at all stated that it was this accused who dropped the grinding stone on the head of the deceased. It is not as though P.W.2 had left when the deceased and the accused were talking to each other. He has admitted that he was present throughout and later he found the deceased with injuries, whereas P.Ws.1 and 3 have stated that in the quarrel, the accused kicked the deceased, pushed him down and dropped the grinding stone on his head. Had it been true, the same would have been witnessed by P.W.2 also. The very fact that P.W.2 has not stated so creates a doubt in the evidence of P.Ws.1 and 3 in this regard. At any rate, in the light of the fact that the enormous delay in preferring the complaint and forwarding the same to the court stands

unexplained which creates a strong doubt in the case of the prosecution, the doubt in the evidence of P.Ws.1 and 3 gets further strengthened. There is absolutely no explanation for the same. In the light of the above circumstances, we are not in a position to sustain the conviction and we are bound to give the benefits arising out of such doubts in favour of the accused. Thus, we hold that the prosecution has miserably failed to prove the case against the accused beyond all reasonable doubts and so, he is entitled for acquittal.

16. In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellant/accused by the trial court are hereby set aside and he is acquitted of the charge. Fine amount already paid, if any, shall be refunded to him. His bail bond shall stand terminated.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.II,
Ponneri.
- 2.Thro the Chief Judicial Magistrate,
Ponneri, Thiruvallur.
- 3.The IV Additional Sessions Judge,
Ponneri,
Thiruvallur District.
- 4.Thro -do- The District and Sessions Judge,
Ponneri, Thiruvallur.
- 5.The Superintendent,
Central Prison,
Puzhal.
- 6.The Judicial Magistrate-I,
Tiruchirappalli.
- 7.The Superintendent of Police,
Tiruvallur.

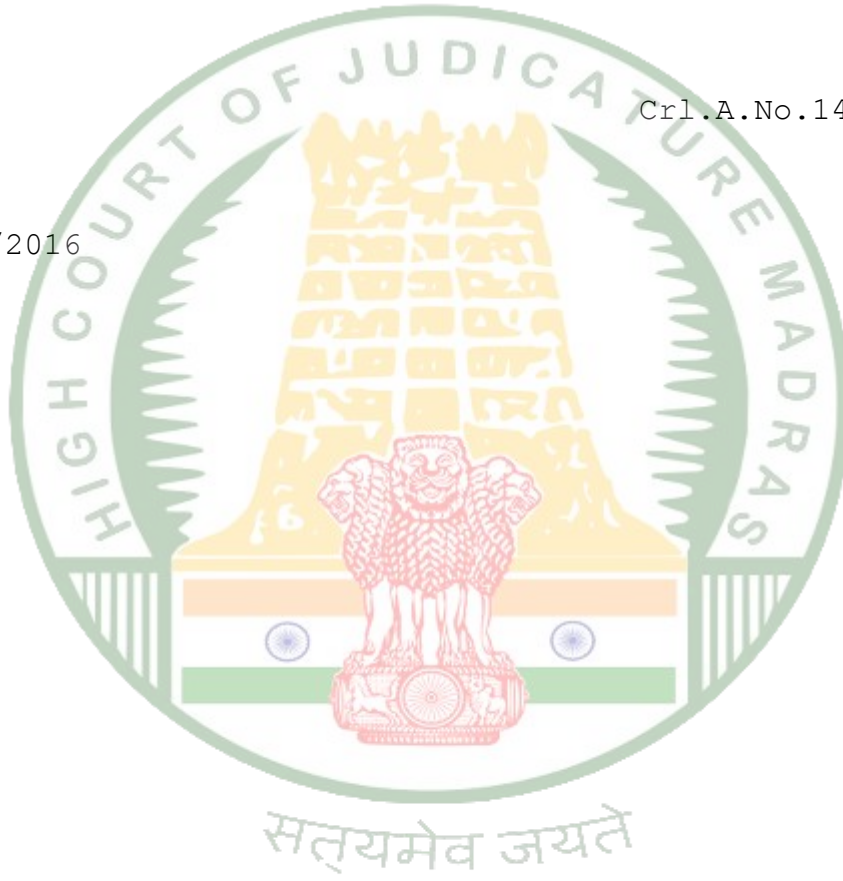
8.The Inspector of Police,
Redhills P.S.,
Thiruvallur District.

9.The Public Prosecutor,
High Court,
Chennai.

+1cc to Mr.A.V.Arun, Advocate Sr.30641

Cr1.A.No.140 of 2014

scd[co]
srg 11/07/2016



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