

Bail Slip

The Appellant/Accused was directed to be released on Bail in and by the order of this court dated 20.04.2015 made in MP 1/2015 in CrI.A.250/2014 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2016

CORAM

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

Criminal Appeal No.250 of 2014

Muji @ Mujibir Rehman ... Appellant/Accused

-Vs-

State Rep: by Inspector of Police
Panruti Police Station
Cuddalore District,
Crime No.484/2011 ... Respondent/Complainant

This Criminal Appeal has been preferred Under Section 374 (2) of Cr.P.C. to set aside the conviction and sentence imposed in judgment dated 15.04.2014 made in S.C.No.198 of 2013 on the file of the District Sessions Judge, Mahila Court, Cuddalore, by allowing this appeal.

For Appellant : Mr.S.Ashok Kumar, Senior Counsel
for Mr.P.Palaninathan

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

WEB COPY
J U D G M E N T

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

The appellant is the sole accused in S.C.No.198 of 2013 on the file of the learned District Sessions Judge, Mahila Court, Cuddalore. He stood charged for offences under Sections 449 and 302 of IPC. The Trial Court convicted him under both

charges and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for two years for the offence under Section 449 IPC and to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for two years for the offence under Section 302 of IPC. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:-

The deceased in this case was one Mrs.Sabira Begum. Along with her family members, she had shifted her family to Panruti, to the street where the accused was also residing. As a matter of fact, the accused was residing as a neighbour of the deceased. In due course of time, the accused had developed a desire to have sex with the deceased. On few occasions, he made sexual advances to her, but she did not positively respond. The accused however determined to have sex with her. In pursuance of the said determination, on 14.05.2011, at about 10.00 a.m., when the deceased was alone at her house, the accused trespassed into the house and hugged her. The deceased resisted and did not agree for sex. Enraged over the same, the accused took out a knife and stabbed her indiscriminately. The deceased fell down with injuries in a pool of blood. The accused ran away from the scene of occurrence. The occurrence was not witnessed by anyone. On hearing the alarm raised by the deceased, P.Ws.3 and 4 rushed towards the house of the deceased. They found the deceased struggling for life. According to them, when they enquired, the deceased told them that it was this accused, who stabbed her repeatedly. Thereafter, they took her to Panruti Government Hospital.

3. P.W.2 examined the deceased at 10.20 a.m., At that time, she found the deceased unconscious. Ex.P2 is the accident register. The deceased died at 10.30 a.m. in the hospital, despite first aid given to her.

4. P.W.1, the husband of the deceased initially went to the hospital and thereafter, he went to Panruti Police Station and made a complaint at 11.30 a.m under Ex.P1. On receipt of the said complaint, P.W.10, the then Inspector of Police registered a case in Crime No.484 of 2011 under Section 376 r/w 511 and 302 IPC. Ex.P7 is the First Information Report. He forwarded both the documents viz., the Complaint (Ex.P1) and the FIR (Ex.P7) to the Court, which were received by the learned Judicial Magistrate at 5.15 p.m. on 14.05.2011.

5. P.W.10 - the Inspector of Police continued the investigation. He immediately proceeded to the place of

occurrence and prepared an Observation Mahazar and a rough sketch in the presence of witnesses. Then he recovered the blood stained earth and the sample earth at the place of occurrence. He conducted inquest on the body of the deceased and forwarded the same for postmortem.

6. P.W.2 - Dr.Vanitha conducted autopsy on the body of the deceased at 5.10 p.m on 14.05.2011 and she found the following injuries:

1. 3 x 3 cm x 5 cm incised wound 1 cm below left breast
2. 5 x 2 cm incised wound left gluteal region
3. 3 x 2 cm incised wound lateral aspect of left thigh
4. 2 x 1 cm incised wound post aspect of left thigh
5. 2 x 2 cm incised wound lateral aspect of left gluteal region

6. 7 x 0.5 cm incised wound left side hip. Ex.P3 is the postmortem certificate. She opined that the injuries found on the body of the deceased would have been caused by a weapon like Knife. She further opined that the death was due to shock and hemorrhage due to the said injuries.

7. During the course of investigation, P.W.10 collected the blood stained clothes from the body of the deceased. When the investigation was in progress, on 15.05.2011, the accused voluntarily appeared before P.W.7 - the then Village Administrative Officer, Panruti Town at 10.00 a.m., and wanted to confess. P.W.7 allowed him to confess and he reduced the same into writing. Ex.P4 is the said confession. Then along with the report under Ex.P4, P.W.7 took the accused and produced him before P.W.10 on the same day. P.W.10 arrested the accused and on such arrest, he gave voluntary confession, in which he disclosed the place where he had hidden the knife, pant and shirt. The same was recorded in the presence Mr.Yashin and Mr.Shahjahan. In pursuance of the said confession, he took the police and the witnesses to the place of hide out and produced M.Os.3 to 6. [M.O.3 - knife; M.O.4 - knife handle; M.O.5 - Full hand shirt and M.O.6 - Pant]. He recovered the same under Mahazars. P.W.11 continued the investigation and on completing the same, he laid charge sheet against the accused.

8. Based on the above materials, the Trial Court framed charges as detailed in the first Paragraph of this judgment. In order to prove the same, on the side of the prosecution, as many as 11 witnesses were examined and 11 documents were exhibited, besides 10 material objects.

9. Out of the said witnesses, P.W.1 - the husband of the deceased has turned hostile and he has not supported the case of

the prosecution in any manner. P.W.2 - Dr.Vanitha has spoken to the fact that at 10.20 a.m. when she examined the deceased at Panruti Government Hospital, she was unconscious and then after 10 minutes, she died. She has further spoken about the Postmortem conducted and her final opinion regarding the cause of death. P.Ws.3 and 4, who were relatives of the deceased has stated that on hearing the alarm raised by the deceased, they rushed to the house and found the deceased struggling for life. They further stated that the deceased told them that she was stabbed by the accused. P.Ws.5 and 6 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.7 has spoken about the Extra Judicial Confession given by the accused under Ex.P4. P.W.8 has spoken about the preparation of Observation Mahazar and rough sketch at the place of occurrence. P.W.9 has spoken about the fact that he carried the FIR and handed over the same to the learned Magistrate at 5.15 p.m on 14.05.2011. P.Ws.10 and 11 have spoken about the investigation done and the final report filed.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness. His defence was a total denial.

11. Having considered all the above materials, the Trial Court convicted the appellant under both the charges and that is how the appellant is before this Court with this criminal appeal.

12. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor for the State and we have also perused the records carefully.

13. The learned counsel for the appellant would submit that in this case, the prosecution has not proved any of the circumstances beyond reasonable doubt. He would further submit that though P.Ws.3 and 4 have spoken that the deceased told them that it was this accused, who stabbed her, absolutely there is no evidence.

14. So far as Extra Judicial Confession is concerned, P.W.4 has stated that on the date of occurrence viz., 14.05.2011, the accused was kept in police custody. When that be so, the learned counsel for the appellant would submit that the Extra Judicial Confession stated to have been given by the accused on 15.05.2011 cannot be true.

15. The learned Additional Public Prosecutor would however vehemently oppose this appeal. According to him, the statement made by deceased would amount to dying declaration, which is

duly corroborated by Extra Judicial Confession given by the accused to P.W.7. From these circumstances, according to the learned Public Prosecutor, the prosecution has proved the case beyond reasonable doubts.

16. As stated above, there are only two circumstances mainly projected by the prosecution in this matter. First one is that on hearing the alarm raised by the deceased, when P.Ws.3 and 4, who are the relatives of the deceased had rushed to her house, they found her lying in a pool of blood with number of stab injuries and she told them that it was this accused who stabbed her. But P.W.2 Dr.Vanitha has stated that the deceased was unconscious and she breathed her last within 10 minutes. This would create doubt in the veracity of the evidences of P.Ws.3 and 4. Now going by the nature of injuries and going by the medical evidence, it is highly unbelievable that the deceased would have been in a position to tell P.Ws.3 and 4 that it was this accused who stabbed her. Therefore, we reject the evidences of P.Ws.3 and 4.

17. The next circumstance relied on by the prosecution is the Extra Judicial Confession stated to have been given by the deceased on 15.05.2011 at 10.00 a.m at the office of P.W.7. As rightly contended by the learned counsel for the appellant, P.W.4 has admitted that on the date of occurrence, when he along with other relatives had gone to the Police Station, he found the accused in the custody of the police. When that be so, the case of the prosecution that on 15.05.2011 at 10.00 a.m., the accused went to P.W.7 voluntarily to make confession cannot be believed. At any rate, since, there is doubt regarding the Extra Judicial Confession, as per the settled law, unless it draws corroboration from independent sources, it is difficult to sustain the conviction imposed on the appellant. In a case of this nature, it is needless to point out that the prosecution has to prove the circumstances projected by it beyond reasonable doubts and all such proved circumstances, should form a complete chain without any break, so as to unerringly point to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. Here in this case, the motive has not been proved. Even the other circumstances projected by the prosecution have not been proved and they are shrouded with lot of suspicion. There is no other independent witness. For all these reasons, we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled to acquittal.

18. The Criminal Appeal is allowed and the conviction and sentence imposed on the appellant by the learned District Sessions Judge, Mahila Court, Cuddalore in S.C.No.198 of 2013

are hereby set aside. The appellant is acquitted and he is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to him. Bail bond, if any, shall stand discharged.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. Inspector of Police
Panruti Police Station
Cuddalore District,
2. The District Sessions Judge, Mahila Court,
Cuddalore.
3. The Public Prosecutor
High Court, Chennai.
4. The Judicial Magistrate No. I,
Panruti.
5. Do-Thro-The Chief Judicial Magistrate
Cuddalore.
6. The Superintendent,
Central Prison,
Cuddalore.
7. Copy to: The Section Officer,
Criminal Section, High Court,
Madras.
8. The District Collector, Cuddalore.
9. The Director General of Police, Chennai.

1 cc to Mr. P. Palaninathan, Advocate, sr.30832

ak co, kra 11.07.2016

Cr1.A.No.250 of 2014