

BAIL SLIP

CRL.A.No.255 OF 2014

That the Appellant herein/Accused namely Raja S/o.Gajendran on the file of the IV Additional District and Sessions Judge, Ponneri, in SC.NO.211 of 2012 dated 1/4/2014 was released on bail as per order of this court dated 08/7/2014 in MP.No.1/2014 in Crl.A.No.255/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.255 of 2014

Raja

Appellant/Accused

Vs

State rep. By
The Inspector of Police,
Red Hills Police Station,
Crime No.364/2010

Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment of the learned IV Additional District & Sessions Judge, Ponneri, by its judgment dated 01.04.2014 in S.C.No.211 of 2012.

For Appellant : Mr.J.I.Rajkumar Roberts

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGEMENT

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

The appellant is the sole accused in S.C.No.211 of 2012 on the file of the learned IV Additional District & Sessions Judge, Ponneri. He stood charged for offence under Sections 302 & 398 I.P.C. By judgment dated 01.04.2014, the trial Court convicted and sentenced the appellant to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment 3 months for offence under Section 302 I.P.C., and to undergo rigorous imprisonment for seven years for offence under Section 398 I.P.C. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The deceased in this case was one Mr.Mariya Rathinam. He was aged 86 years. He was residing at Door No.2/472, Nethaji 2nd street, M.A.Nagar, Redhills, Chennai - 600 052. On 05.07.2010, he was alone in his house. According to the case of the prosecution, around 2.45 pm, on the said date, the accused trespassed into the said house, in an attempt to commit robbery. Since, the deceased probably resisted, he attacked him with a crow bar and caused his death instantaneously. Since, he could not succeed in his attempt to commit robbery, he ran away from the scene of occurrence. P.Ws.2 & 3 are the neighbours of the deceased. They noticed the accused at or about the time of occurrence, coming out of the house of the deceased. Since, the accused was a stranger, they enquired him for which he said that there was nothing. Then, he fled away from the scene of occurrence. P.Ws.2 & 3 entered into the house of the deceased and to their shock, they found the deceased lying with injuries. P.Ws.2 & 3 immediately, with the help of others, took the deceased to a private hospital known as Sundaram Foundations. But, despite the treatment given, the deceased succumbed to the injuries.

3.P.W.1, the grand daughter of the deceased had gone to Mylapore to her company where she was working. P.W.1's mother had gone to Kancheepuram, where she was working in the Government Transport Corporation. On 05.07.2010 at about 3.00 pm, she was informed by P.W.2 over phone about the occurrence. She went to the hospital and found the deceased in a critical condition. Thereafter, P.W.1 rushed to Redhills Police Station and made a complaint on 05.07.2010 at 6.10 pm.

4.P.W.16, the then Inspector of Police on receipt of the said complaint, registered a case in Crime No.364/2010 for offence

under Sections 307 I.P.C. Since, the name of the assailant was not known it was so mentioned in the F.I.R. Ex.P.14 is the F.I.R., and Ex.P.1 is the complaint. He forwarded both the documents to Court which were received by the learned Judicial Magistrate at 11.30 am on 06.07.2010.

5.P.W.16, took up the case for investigation. He proceeded to the place of occurrence; examined P.Ws.1 to 3 and recorded their statements. He prepared an observation mahazar and a rough sketch at the place of occurrence in the presence of witnesses. He had brought the Forensic Expert to the place of occurrence who after thorough examination could not find any finger print or any other scientific evidence. With the help of Forensic Expert, he recovered the blood stained earth and the sample earth from the place of occurrence. The crow bar which was found at the place of occurrence was also recovered. Then he forwarded all these material objects to Court. The deceased died at 11.15 pm on 05.07.2010. P.W.16 altered the case into one under Section 302 I.P.C. Ex.P.17 is the Alteration Report. Then he conducted inquest on the body of the deceased between 7.00 am and 9.00 am on 06.07.2010 and forwarded the same for post mortem.

6.P.W.8 Dr.Muthu Narayanan, conducted autopsy on the body of the deceased on 06.07.2010 at 2.00 pm. He found the following injuries:-

- "1. Lacerated sutured wound 6 x 1 x bone deep on the left occipital region of the skull with 5 sutures.
2. Lacerated wound with 5 sutures 4 x 1 x bone deep on the just above the right eye brow
3. Lacerated wound 3 x 1 x muscle deep on the left ear lobe
4. Swelling deformity seen on the upper part of left forearm with laceration of 5 x 1 x bone deep. On dissection, complete fracture of ulna
5. On verification of the scalp, 12 cm. darken scalp, deep tissue bruising on the left occipital region. On opening the calvarium, subdural and subarachnoid haemorrhages seen on the both cerebral and cerebella haemorrhages of the brain.
6. Fissured fracture of 8 cm., seen on the left occipital region of the skull.

Heart . Normal size c/s all chambers contained fluid blood. Vlves and coronaries normal

Lungs : Normal size c/s congested larynx trachea empty

Hyoid bone intact. Stomach 300 ml., of . strew coloured fluid with partly digested food particles. No definite smell . Liver, Spleen, Kidneys normal size C/s congested. Bladder empty. Pelvis and Spinal Column intact."

7.Ex.P.6 is the post mortem certificate. He gave opinion that the above injuries found on the dead body of the deceased could have been caused by a weapon like M.O.1. He further opined that the death was due to shock and hemorrhage due to the said injuries.

8.On 06.07.2012, at 8.00 pm, P.W.16 arrested the accused at Gangaianman Koil in the presence of P.W.7 and another witness. On such arrest, he gave a voluntary confession in which, he disclosed the place where he had hidden the blood stained pant and shirt. In pursuance of the same, he took the Police and the witness to the place of hide out and produced a pant (M.O.4) and a shirt (M.O.5). P.W.16 recovered the same under a mahazar. Then he forwarded the accused to Court for judicial remand and also handed over the material objects to Court. He also made a request to the Court on 16.07.2010 for conducting Test Identification Parade. P.W.12 - the then Judicial Magistrate, Ambattur, conducted Test Identification Parade on 22.07.2010 during which, P.Ws.2 & 3 had correctly identified the accused on all the three occasions. The Material Objects were sent for chemical examination and the report revealed that there was human blood on all the material objects including the pant and shirt recovered from the accused. On completing investigation, P.W.16 laid charge sheet against the accused.

9.Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 16 witnesses were examined and 19 documents were exhibited, besides 7 Material Objects.

10.Out of the said witnesses, P.W.1, is the grand daughter of

the deceased. She heard about the occurrence at 3.00 pm on 05.07.2010 and she went to the hospital found the deceased in a critical condition and then she went to the Police Station and made the complaint. P.Ws.2 & 3 who are the neighbours of the deceased have stated that they saw the accused fleeing away from the scene of occurrence at 2.45 pm on 05.10.2014. They have further stated that suspecting some foul play, as the accused was coming out of the house of the deceased and he was a stranger, when they enquired him, he said nothing and then, he fled away from the scene of occurrence. They have also stated that they identified the accused during the Test Identification Parade conducted by the learned Judicial Magistrate. P.W.4 is the daughter-in-law of the deceased. She received information from P.Ws.2 & 3 about the occurrence and she went to the hospital and found the deceased in a critical condition. P.W.5, a neighbour of the deceased has stated that he heard about the occurrence later. P.W.6 has stated about the preparation of observation mahazar and rough sketch at the place of occurrence and recovery of the material objects from the place of occurrence. P.W.7 has spoken about the arrest of the accused on 06.07.2010 at 8.00 pm and the disclosure statement made by him and the subsequent recovery of Material Objects. P.W.8 has spoken about the post mortem conducted and his final opinion regarding the cause of death. P.W.9, a Forensic Expert has stated that he examined the vital organs of the deceased and it proved that there was no poison or alcohol. P.W.10 has examined the Material Objects and the report revealed that there were human blood stains including the pant and shirt recovered from the accused. P.W.11, who helped the Police to recover blood stained earth from the place of occurrence. P.W.12 the then Judicial Magistrate has spoken about the Test Identification Parade conducted by her. P.W.13 a Constable has stated that he handed over the dead body to Doctor for post mortem. P.W.14 has stated that he conducted serology examination on the Material Objects. P.W.15 has spoken about the treatment given to the deceased at Sundaram Foundation Hospital. He has further stated that the deceased died at 11.15 pm on the same day. P.W.16 has spoken about the registration of the case; investigation done and the final report filed in this case.

11. 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 chose examine any witness nor did he mark any document on his side.

12. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

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

14. As we have already pointed out, in this case, the prosecution mainly relies on the evidence of P.Ws. 2 & 3. P.Ws. 2 & 3 have stated that when they were standing near the house of the deceased, they found the accused coming out of the house of the deceased. Since the accused was a stranger, they enquired him and after having told that there was nothing, the accused fled away from the scene of occurrence. Immediately when they entered into the house of the deceased, they saw the deceased lying with injuries and the crow bar was also lying by the side of the deceased. When they came out, the accused had already left the said place.

15. The learned counsel for the appellant would submit that these two witnesses cannot be believed. According to him, the accused was admittedly a stranger to these witnesses and therefore, the identification of the accused made by them, cannot be believed. He would further point out that these witnesses had the occasion to see the accused before the Test Identification parade and therefore, the identification made by them before the learned Judicial Magistrate also cannot be given any weightage.

16. Though attractive, in the said argument, we do not find any force. Admittedly, the accused was a stranger. The test Identification parade was conducted by the learned Judicial Magistrate without any delay. In the Test Identification Parade, P.Ws. 2 & 3 had correctly identified the accused on all the three occasions. During cross examination, as pointed out by the learned counsel, ofcourse, P.W. 3 has stated that after the accused was arrested, he was brought to the place of occurrence by the Police. But P.W. 2 has stated that though she had heard about the fact that the accused was brought to the place of occurrence by the Police, she did not see the accused at that time. P.W. 16 himself has admitted in his chief examination that he brought the accused to the place of occurrence.

17. Though, on the ground that P.W. 3 had occasion to see the accused, when he was brought to the place of occurrence by P.W. 16, but on that score alone, the identification of the accused made by P.W. 3 in the Test Identification Parade can lose weightage to some extent. But, there is no reason to reject the evidence of P.W. 2 because, P.W. 2 had no occasion to see the accused before the Test Identification Parade.

18. P.W. 2 has correctly identified the accused on all the three occasions in the Test Identification Parade as well as in

Court. Neither P.W.2 nor P.W.3 have got any grudge against the accused. As we have already pointed out, he is a stranger both to P.Ws.2 & 3. For these reasons, we do not find any reason to reject the evidences of P.Ws.2 & 3. From these evidences, the fact that the accused was the only one who came out of the house of the deceased at or about the occurrence, has been established. When P.Ws.2 & 3 entered into the house of the deceased, the deceased was found lying in a pool of blood with injuries and the crow bar was also lying by the side of the deceased. There was nobody else in the house of the deceased. The deceased alone was there and utilising the same, the accused had entered into the house of the deceased with a view to commit robbery. Thus, from these circumstances, the prosecution has clearly established that it was this accused who had attacked the deceased with crow bar resulting in his death. Thus, the conviction and sentence imposed on the accused for the offence under Section 302 I.P.C., is liable to be confirmed.

19. Now, turning to the conviction of the accused for offence under Section 398 I.P.C., admittedly, there was no enmity between the accused and the deceased, so as to infer that the intention of the accused was only to commit murder. Utilising the opportunity that the deceased, an old man aged 82 years alone was there in the house, and P.Ws.2 & 3 have noticed that the accused coming out of the house, the accused had gone into the house to commit robbery and since it was resisted, he had killed the deceased. Since, P.W.2 & P.W.3 had gone there, the accused could not go ahead to commit robbery. The accused is therefore liable to be punished for the offence of attempt to commit robbery and the trial Court has rightly convicted him under Section 398 I.P.C.

20. Now, turning to the quantum of punishment, the trial Court has imposed minimum punishment on the appellant which does not require any interference at the hands of this Court. Thus, we do not find any merit at all in the Criminal Appeal.

21. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. It is represented that the appellant is on bail, the trial Court is directed to take steps to secure the presence of the accused to commit him to prison to undergo the remaining period of sentence, if any.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Judicial Magistrate No.II
Ponneri

2.-do- Thro The Chief Judicial Magistrate
Tiruvallur District

3.The Inspector of Police
Red Hills Police Station, Chennai

4.The IV Additional District & Sessions Judge,
Ponneri.

5.The Superintendent Central Prison
Puzhal Chennai

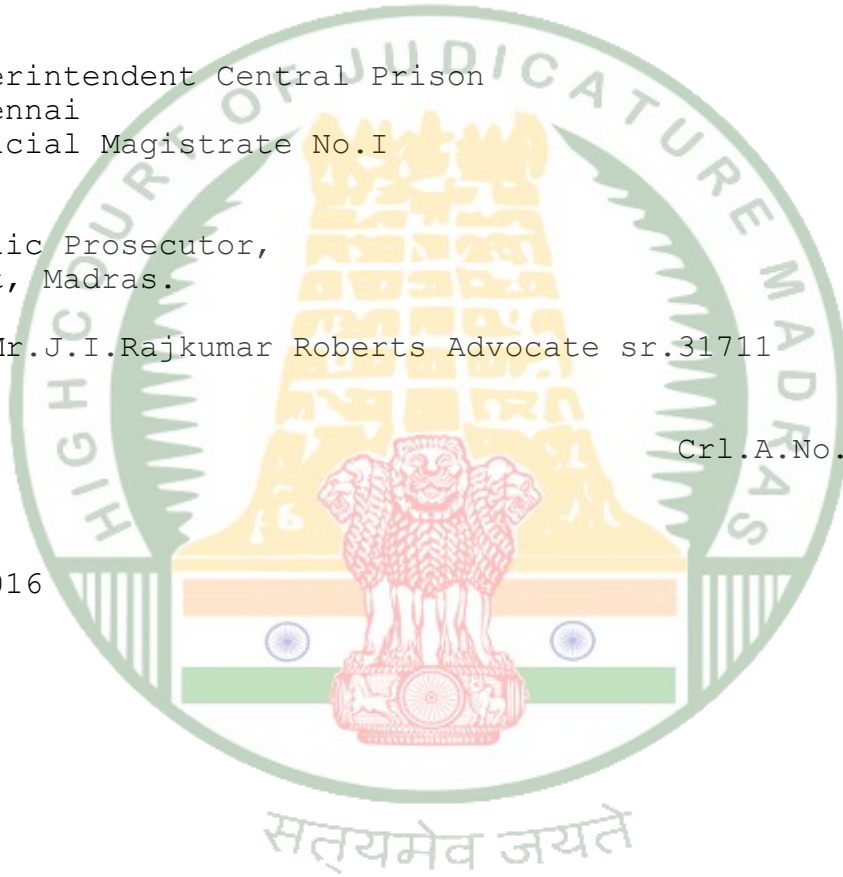
6.The Judicial Magistrate No.I
Trichy

7.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.J.I.Rajkumar Roberts Advocate sr.31711

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