



Bail Slip

That the Appellant/Accused namely Makesh @ Makeswaran was directed to be released on bail as per the order of this Court dated 25.08.2015 Crl MP 1 of 2015 in Crl A No.187/14 and that the appellant/Accused namely Sembattai alias Saravanan was directed to be released on bail as per order of this Court dated 25/9/2014 in Crl M.P.No.2 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2016

CORAM

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

Criminal Appeal Nos.35 and 187 of 2014

Sembattai @ Saravanan ... Appellant in Crl.A.No.35/2014
Makesh @ Makeswaran ... Appellant in Crl.A.No.187/2014

-Vs-

The State rep. by
Inspector of Police
Gopichettipalayam Police Station,
Erode District. ... Respondent in both appeals.

Criminal Appeals have been preferred to set aside the conviction and sentence imposed by judgment dated 08.07.2013 made in S.C.No.191 of 2012 on the file of the I Additional Sessions Court, Erode, by allowing these appeals.

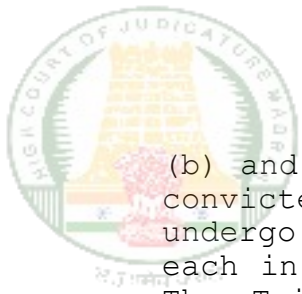
For Appellant
in Crl.A.No.35 of 2014 : Mr.N.Subramani
in Crl.A.No.187 of 2014: Mr.M.Senthil Kumar

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

C O M M O N J U D G M E N T

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

The appellant in Crl.A.No.187 of 2014 is the first accused and the appellant in Crl.A.No.35 of 2014 is the second accused in S.C.No.191 of 2012 on the file of First Additional Sessions Judge, Erode. They stood charged for offences under Sections 294



(b) and 302 IPC. By judgment dated 08.07.2013, the Trial Court convicted them under Section 302 IPC alone and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5,000/- each in default to undergo simple imprisonment for three months. The Trial Court acquitted the accused from the charge under Section 294(b) IPC. Challenging the said conviction and sentence, the appellants are before this Court with the above appeals.

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

The deceased in this case was one Mr.Saravanan. P.Ws.1 and 3 are the mother and sister respectively of the deceased. P.W.2 is his friend. They were residing at Bajanaik Koil Street at Gobi Puthupalayam. Both the accused also belong to Gobichettipalayam.

3. On 10.02.2011 at about 11.15 p.m., at Gobichettipalayam near Indira Cinema Theatre, the deceased was standing and smoking cigarette. P.W.2 was by his side and he was talking to him. At that time, these two accused came there. The accused were enraged over the fact that the deceased was smoking cigarette in front of them. The first accused questioned him as to how dare he was to smoke cigarette in his presence, though he himself happened to be a big rowdy in that area. The second accused also shouted in a similar fashion. They used abusive language. Then both the accused started attacking the deceased with hands. The deceased fell down. The second accused kicked the deceased with legs and the first accused took a big stone lying there and dropped the same on the stomach of the deceased. P.W.2 raised alarm and at once, both the accused took to the heels. P.W.2 out of fear, vanished away from the scene of occurrence without intimating anybody about the occurrence. P.W.1 - the mother of the deceased heard that the deceased sustained injuries and was admitted in the Government Hospital, Gobichettipalayam. Immediately, she rushed to the hospital and found that the deceased was lying with injuries. Thereafter, on 13.02.2011, she took the deceased to a private hospital known as S.K.Hospital, Ram Nagar, Gobichettipalayam. At the time of admission, the Doctors were told that the deceased had fallen down from the first floor of the house accidentally and sustained injuries. The Doctors found that there were abdominal internal injuries. Therefore, surgery was conducted on his abdomen. His condition became worse. Therefore, on 14.02.2011, they discharged the deceased and forwarded him to yet another private hospital known as Dr.K.M.Nallaswamy Hospital, Erode for further treatment. Despite treatment, he died on 18.02.2011 on the way to Government Hospital, Erode.



4. On receiving intimation from the hospital, P.W.11, the Head Constable attached to the Gobichettipalayam Police Station went to the Government Hospital, Gobichettipalayam. On returning to the Police Station, he registered a case in Crime No.126 of 2011 under Sections 294(b), 324, and 506(ii) IPC on 13.02.2011. Ex.P1 is the complaint. Ex.P17 is the First Information Report. He forwarded both the documents to the Court, which were received by the learned Magistrate at 10.30. a.m. on 15.02.2011.

5. The case was taken up for investigation by P.W.10. On 14.02.2011, at 7.30 a.m., he proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.4 and another witness. He examined P.Ws.1 and 4 and recorded their statements. He recorded the statement of the deceased also under Ex.P14. On 18.02.2011, at 5.00 a.m., he received intimation from the hospital that the deceased had died. Therefore, he altered the case into one under Section 302 IPC and submitted an alteration report under Ex.P16 to the Court and handed over the case to P.W.12 for investigation.

6. P.W.12 went to the hospital and conducted inquest on the body of the deceased and forwarded the same for postmortem. P.W.9 - Dr.Om Prakash, conducted autopsy on the body of the deceased on 18.12.2011 at 1.30 p.m. He found the following injuries:

"External injuries:

1. Vertical midline sutured wound present (17 sutures)
2. Small surgical wound right ilium joint, small sutured ilium joint, sutured surgical wound at femoral region, Surgical wound in right femoral region.

Ex.P10 is the postmortem certificate. Ex.P12 is his final opinion. He opined that the deceased would have died due to the injuries found on the body of the deceased. On 20.02.2011 at about 11.15 a.m., he arrested the second accused in the presence of witnesses. On such arrest, he made voluntary confession, in which, he disclosed the place, where he had hidden the stone. In pursuance of the same, he took the Police to the place of hide out and produced the stone (M.O.1). Then P.W.12 forwarded the accused to the Court for judicial remand and also handed over the material object to the Court. On his request, the material object was sent for chemical examination. On 26.05.2011, he arrested the first accused. Then P.W.12 forwarded him for judicial remand. At that stage, the investigation was taken over



by his successor P.W.13. He examined the Doctor and collected medical records and on completing the investigation, he finally laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined; 19 documents were exhibited and 1 Material Object viz., Stone (M.O.1) was marked.

8. Out of the said witnesses, P.W.2 alone is the eye witness to the occurrence. He has stated that when he was talking to the deceased, these accused came there. At that time, the accused abused the deceased, pushed him down and at last, the first accused dropped a huge stone on the abdomen of the deceased. P.W.1 - the mother of the deceased has stated that she heard about the fact that her son was lying with injuries and went to the Government hospital. Thereafter, she immediately took him to the private hospital and after surgery, he was taken to another private hospital and finally to the Government Hospital at Gobichettipalayam, where he breathed lastly. She has also stated that she has made complaint to the Police, upon which, the present case has been registered. P.W.3 - the sister of the deceased has deposed on the basis of hearsay evidence. P.W.4 has spoken about preparation of Observation Mahazar and Rough sketch at the place of occurrence. P.W.5 has spoken about the same facts. P.W.6 - Dr.Rameshbabu has spoken about the treatment given to the deceased at Government Hospital, Gobichettipalayam. P.W.7 - Dr.N.Kumaresan has spoken about the treatment given to the deceased at S.K.Hospital, Gobichettipalayam. P.W.8 - Dr.N.S.V.Kumar has spoken about the treatment given to the deceased at Dr.Nallaswamy Hospital. P.W.9- Dr.Omprakash, has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.10 has spoken about the registration of the case on the complaint of P.W.1. P.W.11 has spoken about the investigation done by him until the deceased died. P.Ws.12 and 13 has spoken about the investigation done and final report filed.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any of the witnesses nor did they mark any documents on their side. Their defence was a total denial.

10. Having considered all the above materials, the trial Court convicted the appellants/accused as stated in the first



paragraph of this judgment. Challenging the same, the appellants/accused are before this Court with these Criminal Appeals.

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

12. As we have already pointed out, the prosecution relies only on the eye witness account made by P.W.2. P.W.2 has stated that when he was talking to the deceased, the accused came there, shouted at the deceased, attacked him with hands and pushed him down and the first accused dropped a huge stone on the abdomen of the deceased. P.W.2 is not a stranger to the deceased. P.W.2 is after all a close friend of the deceased. Even after witnessing the said occurrence, it is stated that he did not give any intimation either to P.W.1 or to anybody else. He has stated that he went to his house without intimating anybody about the occurrence out of fear. P.W.1 on hearing that the deceased had sustained injuries rushed to the hospital and even when the deceased was in the hospital, P.W.2 did not say anything about the occurrence. He disclosed about the occurrence for the first time only on 13.02.2011. The so called explanation offered by him that out of fear, he did not disclose about the occurrence to anybody including the mother of the deceased is not plausible and the same cannot be accepted. Therefore, it is difficult to place full reliance on P.W.2. At the time when the deceased was taken to hospital, P.W.1 told the Doctor that the deceased had fallen down from the first floor accidentally and that is how he sustained injuries. There is no explanation by P.W.1 as well as the prosecution as to why she made such a statement at the earliest point of time that the deceased had fallen down from the first floor of the house and sustained injuries. This also creates doubt in the case of the prosecution. Further, the FIR in this case was registered only on 13.02.2011, i.e., after three days. The same has again reached the Court only on 15.02.2011. Absolutely, there is no explanation for the delay in preferring the complaint as well as forwarding the same to the Court.

13. P.W.2 is of course a solitary eye witness. It is not that the evidence of a solitary witness should be rejected under all circumstances. In a given case, if the evidence of a solitary witness inspires the fullest confidence of the Court, then without waiting for corroboration from any independent sources, the Court can safely act upon the solitary evidence and convict the accused. But, here in this case, for the reasons



before this Court, we find that the evidence of the solitary witness, namely P.W.2 cannot and in fact, does not inspire the confidence of this Court. There is no other evidence against the accused. There is no corroboration coming forward from any other source also, in support of the evidence of P.W.2. In view of these reasons, we hold that it is not safe to act upon the evidence of P.W.2 and to sustain the conviction. We hold that the prosecution has failed to prove the case beyond reasonable doubts.

14. In the result, the Criminal Appeals are allowed and the conviction and sentence imposed on the appellants for the offence u/s.302 IPC by the learned I Additional Sessions Judge, Erode are hereby set aside.

15. The appellants are acquitted of the charges levelled against them and they are directed to be set at liberty, forthwith, unless their presence is required in connection with any other case. Fine amount, if any, paid by the appellants, shall be refunded to him. Bail bond, if any, shall stand discharged.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.1,
Gobichettypallayam.
- 2.-Do_ thro the Chief Judicial Magistrate,
Erode.
- 3.I Additional Sessions Judge,
Erode.
- 4.-Do- thro The Principal Sessions Judge,
Erode.
- 5.Inspector of Police
Gopichettipalayam Police Station,
Erode District.



6.The Public Prosecutor
High Court, Chennai.

7.The Superintendent,
Central Prison, Coimbatore.

+1cc to Mr.Senthil Kumar, Advocate Sr.31602
+1cc to Mr.Subramani, Advocate Sr.31386

Criminal Appeal Nos.35 and 187 of 2014

mg[co]
srg 29/06/2016