

BAIL SLIP

The petitioner/Accused viz. Vijay @ Viji, S/o.Sampath was released on bail in Crl.MP.No.1 of 2015 in Crl.A.447/2014, dt.17.4.2015.

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

Vijay @ Viji Crl.A.No.447 of 2014
... Appellant/Accused
Vs

Inspector of Police,
N2 Kasimedu Police Station,
Chennai. ... Respondent/Complainant

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned VII Additional Sessions Judge, Chennai, made in S.C.No.499 of 2011 dated 30.06.2014.

For Appellant : Mr.T.K.S.Bharathy Anandraj
For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.499 of 2011 on the file of the learned VII Additional Sessions Judge, Chennai. He stood charged for the offence under Section 302 IPC. By judgment dated 30.06.2014, the trial court convicted him under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for three months. Challenging the said conviction and sentence under Section 302 IPC, the appellant/sole accused is before this Court with this appeal.

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

(a) The deceased in this case was one Mrs.Sumathi. She was residing with her husband and other family members at No.353, G.M.Pettai Housing Board, Kasimedu. PW.3 is her daughter and PW.1

is her son-in-law, viz., husband of PW.3. PW.1 and PW.3 were residing at A.J.Colony, Kasimedu, Chennai. On 26.06.2011, according to the prosecution, the deceased spoke to PW.1 over phone and wanted him and PW.3 to come to her house to participate in Thiroupathy Amman Festival. Accordingly, PWs.1 and 3 went to the house of the deceased at G.M.Pettai Housing Board, Kasimedu. Before reaching the house of the deceased, they went to the house of PW.2 and PW.2 also accompanied them and they went to the house of the deceased. When they entered into the house, they found the accused fleeing away from the house of the deceased, which was in the upstairs. When they were about to climb up through the upstairs, the accused came down through the staircase. On seeing PWs.1 and 3, he fled away. They climbed up and found that the doors of the house were locked from outside. They opened the door and went inside, where they found the deceased lying unconsciously. Immediately they made arrangement to take the deceased to a private hospital. The Doctor there told that the deceased had already breathed her last. Thereafter, they took the body to the Stanley Hospital. Leaving the body in the mortuary, PW.1 went to the police station and made a complaint in this regard under Ex.P1. PW.11, the then Inspector of Police, Kasimedu Police Station, on receipt of the complaint, registered a case in Crime No.557 of 2011 under Section 302 IPC against the accused. Ex.P7 is the First Information Report. He forwarded both the complaint-Ex.P1 and the First Information Report - Ex.P7 to the court which were received by the jurisdictional Magistrate at 10.15 p.m on 26.06.2011.

(b) PW.11, in the mean time, took up the case for investigation. He proceeded to the place of occurrence and prepared an Observation Mahazar (Ex.P8) and a rough sketch (Ex.P9) in the presence of PW.6 and another witness. Then, he went to the hospital and conducted inquest on the body of the deceased and prepared an inquest report (Ex.P10) and forwarded the same to the Postmortem.

(c) PW.8 - Dr.Selvakumar conducted autopsy on the body of the deceased on 27.06.2011 at 12.15 p.m. He found the following injuries:-

"No external injuries seen anywhere on the body.

Internal Injuries : On dissection of head :- Dark red contusion measuring 5 cm x 3 cm x scalp deep seen over left parietal region of scalp. Dark red contusion measuring 6 cm x 4cm x muscle deep seen over right temporal region including the temporalis muscle. Skull - Intact. Surface vessels are congested and prominent. Thin film of sub arachnoid hemorrhage seen over both frontal, both temporal and both parietal region of brain. Ventricles filled with blood stained fluid. Base of the skull - intact
Brain - c/s multiple petechial hemorrhages seen in the white matter of both cerebral hemorrhages.

HEART : Normal in size, chambers contain fluid blood
: Valves : NAD : Coronary; Patent : Great Vessels ;
NAD
LUNGS: Normal in size, cut section : congested and
odematous
HYOID BONE : Intact
STOMACH : contains 230 gms of cooked rice
particles present. No specific smell mucosa - NAD
LIVER, SPLEEN : Normal in size, cut section
congested
KIDNEYS : Dark red perinephric contusion seen around
the right kidney measuring 3 x 2x0.3cm c/s -
congested. Left kidney normal in size c/s;
congested
BLADDER : Empty : Uterus : Normal in size c/s
emptly; Genitalia - Normal
PELVIS & SPINAL COLOUMN : Intact."

Ex.P4 is the postmortem certificate. The Doctor gave opinion that the deceased would appear to have died due to effects of head injury sustained.

(d) PW.11 examined the Doctor, collected the postmortem certificate and recorded the statement of the Doctor. Since he was transferred, the investigation was thereafter taken over by his successor PW.12. During the course of investigation, on 28.06.2011, PW.12 arrested the accused at 9 a.m in the presence of one George and Ayyanar and he forwarded him to Court for judicial remand. The investigation was thereafter, continued by PW.13 and he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges for the offence under Section 302 IPC. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined and 10 documents were marked. No material object was marked.

4. Out of the said witnesses, P.Ws.1 and 3 have stated that at the time they went to the house of the deceased along with PW.2, they found the accused fleeing away from the scene of the occurrence. PW.2 had stated that she accompanied P.Ws.1 and 3, but she did not see the accused there. PW.4 has turned hostile and he has not supported the case of the prosecution in any manner. PW.5 is the Doctor, who declared the deceased dead. PW.6 has turned hostile and he has not supported the case of the prosecution in any manner. PW.7 has stated that he took the dead body and handed over the same to the Doctor for postmortem. PW.8 has stated about the postmortem conducted on the body of the deceased and his final opinion regarding the cause of death. PW.9, Forensic Expert, who examined visceral organs and submitted his report to the effect that there was no poison detected in any of the internal organs. PW.10 examined the smear taken from the vaginal cavity of the deceased and submitted his report to the effect that there was no spermatozoa. PWs.11 to 13

have spoken about the investigation done by them and P.W13 has further spoken about the filing of charge sheet against the accused.

5. When the above incriminating materials were put to the accused u/s.313 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.

6. Having considered all the above, the Trial Court convicted the accused under Section 302 IPC and accordingly, sentenced him as detailed in the first paragraph of this judgement. Challenging the said conviction and sentence, the sole accused is before this Court.

7. 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.

8. In this case, the prosecution mainly relies on the evidence of PWs.1 and 3. PWs.1 and 3 have stated that when they reached the house of the deceased, they found the accused fleeing away from the scene of occurrence. PW.2, who accompanied PWs.1 and 3, has not stated so. This creates a doubt in the evidences of PWs.1 and 3. PW.1, in the course of cross examination, has stated that even when he was at his house, PW.2 called him over phone and informed that the deceased was lying unconscious and only thereafter, he along with PW.3 had gone to the house of the deceased. If that be so, P.W.2 alone would have found the deceased lying unconscious. Thereafter she would have informed PWs.1 and 3 about the same. Thus at the time when PWs.1 and 3 went along with PW.2 to the scene of occurrence, P.Ws.1 and 3 could not have seen the accused fleeing away from the scene of occurrence. Thus, the evidences of PWs.1 and 3 that they found the accused fleeing away from the house of the deceased cannot be true.

9. PW.1 in his cross examination has stated that he found a man fleeing away from the scene of occurrence and he was not aware as to whether the said man was the accused. The accused was not previously known to PWs.1 and 3. There is absolutely no evidence to prove that the accused had illicit intimacy with the deceased. This was also known to the family members. Therefore, it cannot be said that PWs.1 and 3 did know the accused. If that be so, the evidence of PW.1 during the cross examination that when he went to the house of the deceased along with P.Ws.2 and 3, he found a person fleeing away from the scene of occurrence and he did not know whether that person was the accused or not, attracts much importance. This creates further doubt in the case of the prosecution.

10. The prosecution has, of course, succeeded in establishing the fact the death of the deceased was due to the head injuries sustained. Whether the head injuries were caused by this accused has not been proved. The deceased would have fallen accidentally and sustained head injury. This possibility cannot be ruled out.

11. In a case of this nature, the prosecution is expected to prove the circumstances projected by them beyond all reasonable doubts and all such proved circumstances should form a complete chain, unerringly pointing to the guilt of the accused and there shall be no other hypothesis which is inconsistent with the guilt of the accused. Here in this case, the possibility that the deceased would have sustained injury by accidental fall or hitting on a blunt surface cannot be ruled out. Therefore, the case of the prosecution that the death was due to the assault made by the accused, is contradicted by the alternative hypothesis. Thus, the circumstances projected by the prosecution do not form a complete chain as required. As already pointed out, the evidences of PWs.1 and 3 that they found the accused fleeing away from the scene of occurrence is liable to be rejected and thus, absolutely there is no other evidence against the accused. We cannot sustain the conviction on mere surmises, as law requires proof of guilt beyond all reasonable doubts. .

12. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the accused by the trial court are set aside and he is acquitted of the charge under Section 302 of IPC. Fine amount already paid, if any, shall be refunded to him. His bail bond shall stand terminated.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1. The Inspector of Police,
N2, Kasimedu Police Station,
Chennai.
2. The VII Additional Sessions Judge,
Chennai.
3. The Public Prosecutor,
High Court, Chennai.
- 4.The XI Metropolitan Magistrate,George Town,Chennai.
- 5.The Chief metropolitan Magistrate,
Egmore.
- 6.The Principal Sessions Judge,
Chennai.

7.The Superintendent,
Central Prison, Puzhal, Chennai.

8.The District Collector,
Chennai.

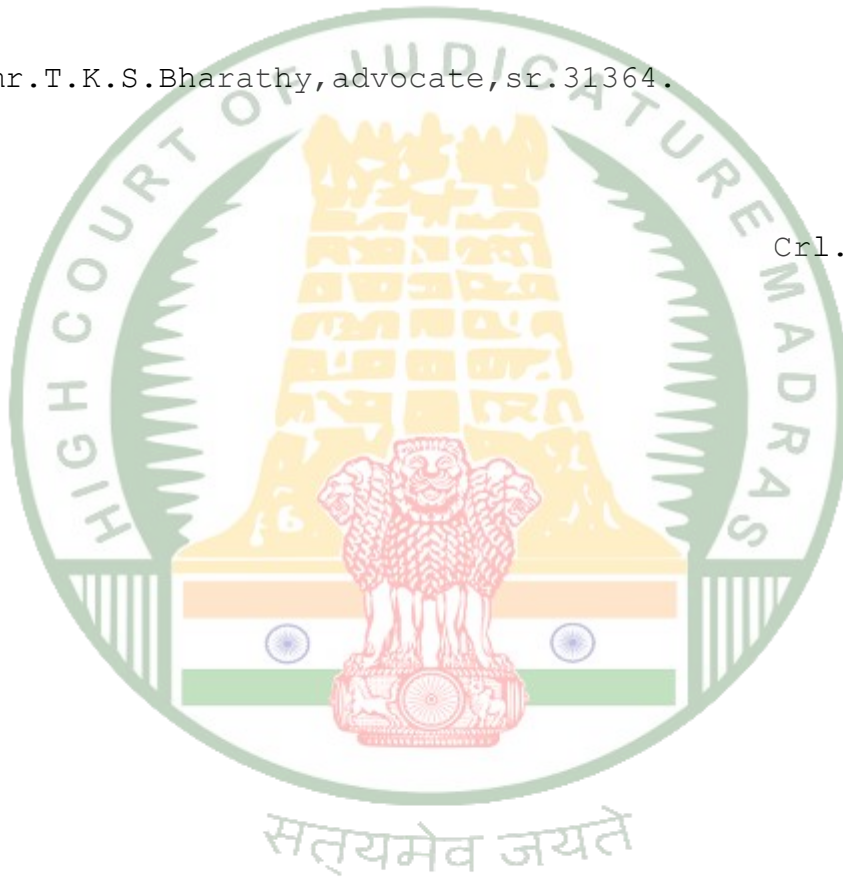
9.The Direct General of Police,
High Court, Madras.

10.The Section Officer,
Criminal Section, High Court,
Madras.

+1 cc to mr.T.K.S.Bharathy,advocate,sr.31364.

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Judgment in
Crl.A.No.447 of 2014



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