

BAIL SLIP

The Appellant/Accused was directed to be released as bail as per the order of this court dated 28.10.2015 and made in MP.NO.1/2014 IN CRL.A.510/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.510 of 2014

Senthil Kumar .. Appellant /Single Accused

Vs

State rep. By
Inspector of Police,
Ennore Police Station,
Thiruvallur District,
Crime No.606/2009 ..Respondent /Complainant

Prayer:- Criminal Appeal filed under Section 374 Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the judgment dated 07.06.2012 passed in S.C.No.129 of 2010 by the learned IV Additional Sessions Judge, Ponneri.

For Appellant : Mr.T.Muruganantham

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

JUDGEMENT

(Judgment of the Court was delivered by V.Bharathidasan.J)

The appellant is the sole accused in S.C.No.129 of 2010 on the file of learned IV Additional Sessions Judge, Ponneri. He stood charged for offences under Sections 341 and 302 IPC. By judgment dated 07.06.2012, the trial Court convicted him under both the charges and sentenced him to undergo Rigorous Imprisonment for 6 months for the offence under Section 341 IPC and to undergo imprisonment for life for the offence under Section 302 IPC. The trial Court ordered the above sentences to run concurrently. 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:-

Deceased, in this case, one Nalini, is the second wife of the accused. Suspecting her fidelity, accused frequently quarreled with the deceased. On 16.02.2009, in the morning hours, the deceased went to her mother's house and she informed her mother (P.W.1) that the accused is quarreling with her, regularly. P.W.1 advised the deceased to go back to her matrimonial home and she will come and settle the issues. After some time, P.W.1 heard the news that the accused had attacked the deceased. Immediately, she went to the house of the deceased and saw the deceased with bleeding. Immediately, P.W.1 took the deceased to one Sugam Hospital, where she was given first aid and thereafter, referred to Government General Hospital, Chennai. Subsequently, she succumbed to injury.

3. On receipt of information from the hospital, the then Sub Inspector of respondent police, reached the Government Hospital and found the deceased in an unconscious state. So, he obtained a statement (Ex.P.1) from P.W.1 and registered a case in Crime No.606 of 2009 for the offences under Sections 341 and 307 IPC against the accused. Ex.P.8 is the First Information Report.

4. P.W.11, Inspector of Police, took up the case for investigation and visited the scene of occurrence and prepared an Observation Mahazar and a Rough Sketch and also recovered a stone (M.O.1), bloodstained earth (M.O.2) and sample earth (M.O.3) in the presence of P.W.5 and another witness. P.W.11 made arrangements to have the place of occurrence photographed and recorded statements of witnesses. In the meantime, injured succumbed to injury. Hence, P.W.11 altered the First Information Report into Sections 341 and 302 IPC (Ex.P.10). Thereafter, he conducted inquest on the body of the deceased in the presence of Panchayathar and prepared Ex.P.11-Inquest Report. He arrested the accused and forwarded him to Court for judicial remand. Then, he forwarded the body for post mortem.

5. P.W.10, the Doctor, working in the Government General Hospital, Chennai, conducted autopsy on the body of the deceased on 17.12.2009 at 1.55 p.m. She found the following injuries:
" I. Injuries - blackened right eye, bleeding right ear seen.

1) Reddish brown abrasions seen at the following site: (a) 4 x 1 cm - occipital region (b) 2 x 1 cm - behind right ear lobe (c) 2 x 0.5 cm - below right ear lobe (d) 2.5 x 1 cm - left forehead (e) 1 x 0.5 cm - outer part of left eye (f) 4 x 3 cm - outer part of right eye (g) 7 x 4 cm - Right cheek (h) 2 x 1 cm - Right part of chin (i) 8 x 5 cm - back of lower 1/3 of right forearm (j) 3 x 1 cm - back of right hand (k) 1 x 1 cm - front of base of (i) right middle finger (ii) right index finger respectively (l) 1 x 1 cm - tip of right middle finger (m) 6 x 1 cm - front of lower thigh (n) 2 x 1 cm - back of left ring finger (o) 5 x 2 cm - back of left hand (p) 7 x 3 cm - back of lower 1/3 of left forearm. (q) 5 x 2 cm - back of left elbow (r) 5 x 4 cm - front of left upper arm.

2) Laceration of size 0.5 cm x 0.5 cm x skin deep seen over right part of chin.

3) Lacerated sutured wound of 4 cm long width 3 intact sutures

seen over left panetal region.

4) Patchy contusions seen over right cheek of size 7 x 6 width abrasions of size 3 x 2 cm in between. Contusion seen over chin of size 3 x 1 x 0.5.

5) Swelling deformity seen over right part of face. On dissection, the bones of the lateral wall of right eye and zygomatic arch fractured with surrounding soft tissues contusions.

On dissection of head : Scalp diffuse contusion seen over except the areas of frontal and occipital region;. Vault - Linear tissue fracture of 13 cm length seen on left temporal bone and 5 cm, 4 cm, 2 parallel linear tissues fractures seen on right temporal bone. Dura- intact. Diffuse haemorrhage seen. Sub-Arachnoid haemorrhage seen over both panetal bones. Brain congested. Base - 13 cm long linear tissue fracture seen in middle cranial fossa.

On Dissection of Therax :

Heart - normal on size. Chambers contain fluid blood. coronaries, great vessels, valves - intact. Lungs - normal in size c/s congested. On Dissection of Abdomen.

Stomach containing 300 ml black colour fluid. Nill specific orders. Mucosa - intact. Liver, spleen, kidney - normal in size. C/s. Congested. Uterus measures 9 x 8 x 2 cm c/s empty. Bladder - empty. Hyoid, pelvis, spinal column - intact.

P.W.10 also gave opinion that the deceased would appears to have died due to head injury. On completing investigation, P.W.11, laid charge sheet against the accused.

6. Based on the above materials, the trial Court framed 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 11 witnesses were examined and 11 documents were exhibited, besides 3 Material Objects.

7. Out of the said witnesses, P.W.1 is the mother of the deceased. She is living in Dharma Nagar, Ennore. Her evidence was that in the morning, on the date of occurrence, the deceased came to her house and complained to her that the accused was quarreling with her and beating her and P.W.1 advised the deceased to go back to her matrimonial home and she would come and settle the issue. It is her further evidence that after some time, she heard the news that the deceased was seriously attacked by the accused and she gave a complaint (Ex.P1). P.W.2, brother of the deceased, has stated that after hearing the news, he saw the deceased in the hospital. P.W.3, grandmother of the deceased, has also spoken about the hearsay information.

8. P.W.5, who was examined as Mahazar witness, has turned hostile. P.W.6 is the Head Constable. He accompanied the body of the

deceased and handed over the same to the Doctor for Post Mortem. P.W.7, has spoken about the recovery of material objects under preparation of Observation Mahazar. P.W.8, neighbour of the accused, has stated about the quarrel entered into between the deceased and the accused and the accused attacked the deceased with hands. P.W.9, the Doctor working in Sugam hospital, has stated that he treated the deceased and referred her to Government General Hospital and issued Accident Register (Ex.P6). P.W.10, Doctor in Government General Hospital, Chennai, has spoken about the post mortem conducted and the final opinion given by him regarding the cause of death. P.W.11, Investigation Officer, has spoken about the investigation done by him and filing of final report in this case.

9. 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 or marked any documents.

10. 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.

11. 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.

12. The learned counsel for the appellant would contend that it is a case of circumstantial evidence. There is no eye-witness to the occurrence and the prosecution did not prove any circumstance to establish the guilt of the accused. The learned counsel would therefore pray for acquittal of the accused.

13. Per contra, the learned Additional Public Prosecutor submits that the accused and the deceased are husband and wife and the occurrence took place in the house of the accused. P.W.8, neighbour, has deposed that he saw the quarrel entered into between the accused and the deceased and the accused beating her with hands. Hence, the above said circumstance has been clearly proved by the prosecution. Thus, according to the learned Additional Public Prosecutor, there is no merit in the criminal appeal and the same is liable to be dismissed.

14. We have considered the above submissions.

15. It is a case of circumstantial evidence. It is settled law that in cases of circumstantial evidence, the prosecution must prove all the circumstances projected by them beyond reasonable doubt and the proved circumstances should unerringly point the guilt of the accused. In the instant case, P.W.1, mother of the deceased, has stated that she went to the scene of occurrence, after hearing the news that the accused attacked the deceased. P.W.3, brother of the deceased also went to the scene of occurrence after hearing the news. P.W.8 has spoken about the quarrel entered into between the accused and the deceased and the accused beating the deceased with hands.

Except that, there is no other evidence available to prove that the accused attacked the deceased with stone. The prosecution did not let in any evidence to establish that the accused attacked the deceased with stone and caused her death. Even the evidence of P.W.8 not supported the prosecution story. Hence, in the absence of any other evidence, we find no reason to convict the accused. Therefore, the accused cannot be convicted for the offences under Sections 341 and 302 IPC. In the above circumstances, the judgment of the court below is liable to be set aside and the appellant is entitled for acquittal.

16. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned IV Additional District and Sessions Judge, Ponneri, in S.C.No.129 of 2010, by the judgment dated 07.06.2012, are hereby set aside. The appellant/accused is acquitted of the charges levelled against him. Bail bond, if any, shall stand discharged.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

mrp

To

- 1 The Judicial Magistrate, Thiruvattiyur
- 2 The Chief Judicial Magistrate, Tiruvallur
- 3 IV Additional District and Sessions Judge, Ponneri.
- 4 The principal Sessions Judge, Tiruvallur
- 5 The Director General of Police, Mylapore, Chennai-4
- 6 The District collector, Tiruvallur District
- 7 The Superintendednt, Central Prison, Puzhal, Chennai
8. The Public Prosecutor, High Court, Madras.
- 9 The Inspector of police, Ennore police station,
- +1 cc to Mr.T.Muruganantham, Advocate SR.NO. 32145/2016

CrI.A.No.510 of 2014

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RD 29/12/2016