

Bail Slip

That the Appellant/Accused namely Ma Basha was directed to be released on bail as per the order of the this court dated 06.07.2015 in Crl.MP No.1/14 in Crl.A.No.598/14.

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

CRL.A.No.598/2014

Ma Basha .. Appellant/accused

Vs

State by
The Inspector of Police,
South Police Station,
Vellore, Vellore District. ... Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned I Additional District and Sessions Judge, Vellore District, Vellore, made in S.C.No.206 of 2009 dated 05.08.2014.

For Appellant : Mr.R.Sankarasubbu
for M/s.M.Sathish Kumar

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

JUDGMENT

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

The appellant is the sole accused in S.C.No.206 of 2009 on the file of the learned I Additional District and Sessions Judge, Vellore, Vellore District. He stood charged for offences

under Sections 364 and 302 of IPC. By judgment dated 05.08.2014, the trial court convicted him under Section 302 of IPC alone and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for four years. The trial court acquitted the accused from the charge under Section 364 of IPC. 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:

(a) The deceased in this case was one Mr. Babu @ Sherkhan. P.W.1 is his son and P.W.2 is his wife. On 03.01.2009 at about 08.00 p.m., the deceased was at his house along with P.Ws.1 and 2 and his family members. According to the further case of the prosecution, at that time, the deceased and other family members were eating the dinner. The appellant/accused and one Munwar also hail from the same locality. They came to the house of the deceased and wanted the deceased to come out. The deceased went along with the accused/appellant and Munwar. Thereafter, he did not return at all. On the next day morning, by about 08.00 a.m., the dead body of the deceased was found lying near a railway track at Vellore Krishna Nagar. P.W.1, who was in search of his father, went to the place of occurrence, found the dead body and then went to the police station and made a complaint at 01.00 p.m. on 04.01.2009. On receipt of the said complaint, P.W.8 Head Constable registered a case in Crime No.7 of 2009 under Section 302 of IPC on the file of the Vellore Police Station. Ex.P.12 is the First Information Report. He forwarded both the documents to court and handed over the case diary to P.W.9 for investigation.

(b) P.W.9 took up the case for investigation, 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 conducted inquest on the body of the dead body and then forwarded the same for postmortem. He also arranged for photographs being taken at the place of occurrence at various angles.

(c) P.W.6 conducted autopsy on the body of the deceased. He found the following injuries:

'Moderately nourished body of a male. Eyes closed. Mucous membranes of mouth, lips and tongue pale. Blood stained mucous froth seen oozing from mouth and nostril.

ABRASIONS

- 1) 7*4 cm in left cheek
- 2) 3*3 cm in left angle of mandible
- 3) 1*1 cm in left elbow joint

- 4)1*1 cm in right knee joint
- 5)1*1 cm in right side zygoma
- 6)1*1 cm in right and left side alae of nose.

LACERATION

- 1)2*1*1 cms in left lower lip
- 2)2*1*1 cms over right upper of occipital region of scalp

O/D:

Sub-Scalp haematoma of size 3*2 cms extending over right temporo-parietal occipital region of scalp.

BRAIN:

- 1)Extra dural haematoma of about 10*8*1 cms over right temporo parietal occipital region
- 2)9Subdural haematoma of 8*6*0.5 cm over the right temporo parietal occipital region
- 3)Diffuse sub arachnoid hemorrhage seen over the parietal region of both sides and occipital lobe
- 4)On cut section, pale. Multiple petechial hemorrhages seen.

Other findings

HYOID BONE: Intact

LARYNX AND TRACHEA : Contained mucous froths, mucosa pale. All vital mid line structures of neck were intact. NAD.

LUNGS: Both lungs, normal. C/s. Pale

HEART: Normal size, Great vessels normal, Coronary vessels patent. Coronary ostia were normal. All chambers empty.

STOMACH: Empty. Mucosa pale.

SMALL INTESTINE: Contained yellowish chyme with bile stained fluid. Mucosa pale.

LARGE INTESTINE: Distended with gas.

LIVER, SPLEEN, KIDNEY: On cut section found pale.

GALL BLADDER: Contained bile.

PANCREAS: C/s pale.

BLADDER: Empty.

All other internal organs: On C/s found pale.''

The visceral organs were sent for toxicological analysis. The report revealed that the deceased had some Aluminium Phosphide and Ethyl Alcohol. He gave opinion that the death was due to consumption of Ethyl Alcohol and Aluminium Phosphide and due to head injury.

(d) P.W.9, during the course of investigation, arrested the accused on 05.01.2009 at 2.00 a.m., in the presence of P.W.5 and another witness. On such arrest, the accused/appellant gave a voluntary confession in which he disclosed the place where he had hidden M.Os.5 and 6. In pursuance of the same, he took the

police to the place of hide out and produced M.O.5 Blood Stained T.Shirt and M.O.6 Blood Stained Trouser. P.W.9 recovered the same under a Mahazar. Then, he forwarded the accused to court for judicial remand and handed over the material objects to court. He made a request to court to send the material objects for chemical examination. The report revealed that there were blood stains on all over the material objects including M.Os.5 and 6 recovered from the appellant/accused. On completing the investigation, he laid charge sheet against the accused.

(e) In the final report, the appellant and Munwar were arrayed as accused 1 and 2. On the case being committed to the Court of Sessions, it was numbered as S.C.No.206 of 2009. But during the pendency of the said case before the trial court, the 2nd accused Munwar absconded. The Non-Bailable Warrant issued is still pending execution. Therefore the case against Munwar was split up and the same has been separately tried in S.C.No.120 of 2013. Since the said Munwar has not been so far secured, the trial could not go ahead.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused/appellant denied the same. In order to prove the case, on the side of the prosecution, as many as 9 witnesses were examined and 16 documents and 10 material objects were also marked.

4. Out of the said witnesses, P.Ws.1 and 2, who are the son and wife respective of the deceased has spoken that on 03.01.2009 at about 08.00 p.m., the appellant and Munwar came to their house and in a friendly manner took the deceased with them. Thereafter, the deceased did not return. P.W.3 has stated that around 09.00 p.m. on 03.01.2009, near Krishna Nagar at Vellore, he found the appellant, Munwar and the deceased were drinking and they were chatting among themselves. They also shouted against each other. After sometime, they left the place. P.W.4 has spoken about the preparation of the Observation Mahazar and the Rough Sketch in the presence of witnesses. P.W.5 has spoken about the arrest of the accused and the consequential recovery of the material objects. P.W.6 has spoken about the postmortem conducted and his final opinion regarding cause of death. P.W.7 has spoken about the chemical examination conducted on the visceral organs on the dead body of the deceased. P.W.8 has spoken about the registration of the case and P.W.9 has spoken about the investigation done and his final report.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His

defence was a total denial. However, he did not choose to examine any witness nor mark any document on his side.

6. Having considered all the above, the Trial Court convicted all the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant 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 P.Ws.1 to 3. P.Ws.1 and 2 have stated that the deceased had gone along with the appellant and one Munwar at 08.00 p.m. on 03.01.2009 in Munwar's Auto. P.W.3 has stated that he found the accused and the deceased taking drinks near Krishna Nagar at Vellore and thereafter, they left the place. Except these evidences, there is no other evidences available against the accused.

9. The learned Counsel for the appellant/accused would submit that the medical evidence does not corroborate the eye-witness account. The Doctor, who conducted autopsy, has stated that the death was due to over consumption of Ethyl Alcohol and Aluminium Phosphide. The head injury which was found on the body would have been caused by incidental fall by over drunkardness. This alternative hypothesis has not been ruled out by the prosecution. Similarly, the death due to over consumption of ethyl alcohol has also not been ruled out the case of the prosecution. When the Doctor gave opinion that the death was due to the combined effects of over consumption of ethyl alcohol and aluminium phosphide and was also due to head injury, the appellant/accused cannot be held in any manner responsible for the same. Thus, the medical evidence also does not corroborate the eye-witness account.

10. In view of the foregoing discussions, we hold that even assuming that the eye-witnesses P.Ws.1 to 3 can be believed, based on the same, conviction imposed on the appellant by the trial court cannot be sustained as the medical evidence is, completely in support of the accused. Thus, we hold that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubts. Therefore, he is entitled for acquittal.

11. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant by the trial court are set aside and he is acquitted. The bail bond, if

any, executed by the appellant, shall stand cancelled. The fine, if any, paid by the accused, shall be refunded to the accused.

Sd/-
Assistant Registrar(CS-VI)

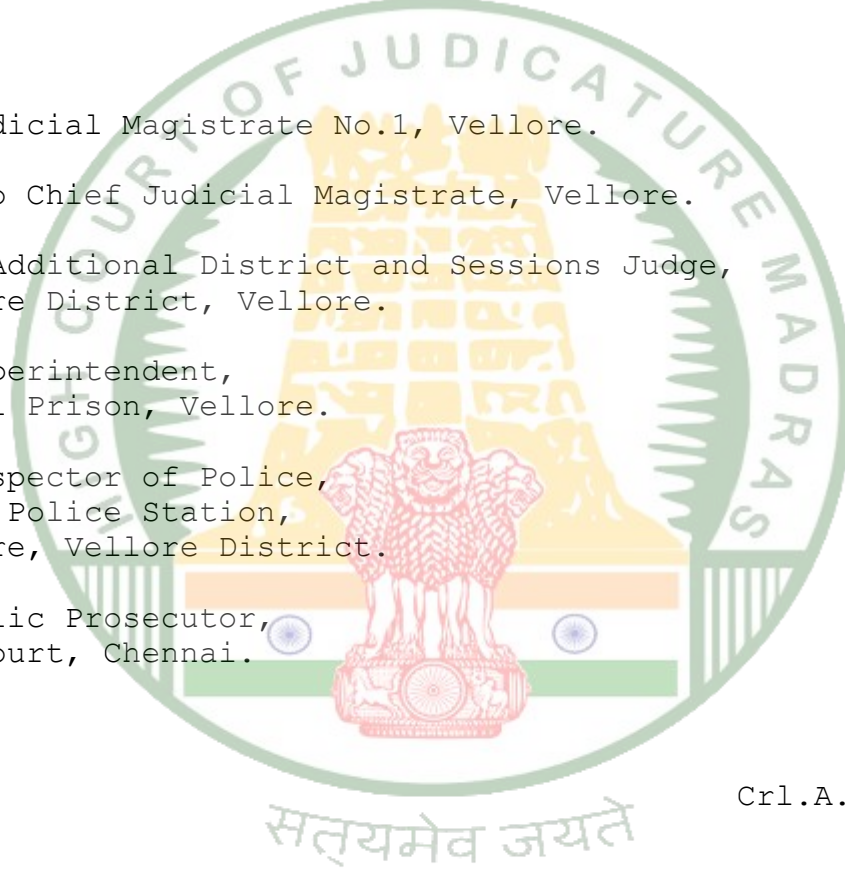
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Sub Assistant Registrar

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To

1. The Judicial Magistrate No.1, Vellore.
2. Do thro Chief Judicial Magistrate, Vellore.
3. The I Additional District and Sessions Judge, Vellore District, Vellore.
4. The Superintendent, Central Prison, Vellore.
5. The Inspector of Police, South Police Station, Vellore, Vellore District.
6. The Public Prosecutor, High Court, Chennai.



Cr1.A.No.598/2014

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