

Bail Slip

The Appellant/Accused Viz. Iyappan aged 42, S/o. Late Chidambaram was directed to be released on bail by the order of this court dated 10.07.2012 and made in MP 1 of 2012 in CrI.A.270 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.2.2016

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE DR. JUSTICE P.DEVADASS

Criminal Appeal No.270 of 2011

Iyappan

... Appellant/Accused

-Vs-

State rep by
The Inspector of Police
Mayiladuthurai Police Station
Nagapattinam District.
Crime No.193/2009.

... Respondent/Complainant

This Criminal Appeal has been preferred against the order of conviction dated 18.02.2011 passed in S.C.No.86 of 2009 on the file of the learned District and Sessions Judge, Nagapattinam.

For Appellants : Mr.S.Sivasubramaniam for
Mr.P.Venkatasubramanian

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by Dr.P.DEVADASS, J.)

The sole accused in the Sessions Case in S.C.No.86 of 2009 on the file of the learned Sessions Judge, Nagapattinam is the appellant.

2. The learned Judge found him guilty under Section 302 IPC and sentenced him to life and also fined him Rs.1000, i/d 3 years S.I

3. The case of the prosecution briefly runs as under:

(i) The accused and the deceased are closely related. On 21.2.2009 at about 4.15 p.m., near the burial ground in Anathandavapuram Selliyanman Koil Street, P.W.1's brother's wife Sakunthala 's death ceremony took place. Quarrel arose between the relatives. At that time, the accused assaulted the deceased on his neck with M.O.4 knife. P.Ws.1 to 3, 5 witnessed the occurrence.

(ii) On 21.2.2009 at about 6.30 p.m., at Myladuthurai Police Station, P.W.1 lodged Ex.P8 complaint with P.W.12 Inspector. He registered this case (Ex.P9 F.I.R.). He sent the Express F.I.R to the Court and superior officers. Visited the scene place. Recorded the statement of witnesses. Prepared Ex.P2 Observation Mahazar in the presence of P.W.5 and another person. Drew Ex.P10 Rough Sketch of the scene place. In the presence of panchayatdars, he held inquest over the dead body of Vadivelu (Inquest Report Ex.P.11). He sent the dead body to the hospital for post-mortem.

(iii) At the Government hospital, P.W.8 performed autopsy on the dead body of the deceased and noticed the following:

A long cut injury in the front side of the neck measuring 15 x 6 x 6 c.m with blood clot and cutting trachea and other important blood vessel.

(iv) P.W.8 issued Ex.P.4, post-mortem certificate opining that the death was due to shock and loss of blood due to cut injuries on the neck, trachea and main blood vessels.

(v) On 24.2.2009, near Needur Ganapathy river bank, P.W.12 had arrested the accused. His Confessional statement Ex.P6 was recorded by P.W.2 in the presence of P.W.10 and another person. The accused took them to a bush near Kittappa bridge in Myladuthurai and produced M.O.4 knife. It was seized by P.W.12 under Ex.P.7 seizure mahazar. P.W.12 produced the accused before the Court for judicial custody. He has produced the case properties under Form 95 to the Court with his requisition Ex.P14 to sent the case property for analysis. After obtaining the Scientific reports (Ex.P15 and 16) concluding his investigation, P.W.13 Inspector filed the Final Report as against the appellant before the committal Court.

4. After committal, the learned Sessions Judge upon hearing both sides and on consideration of the case records framed charges under Sections 302 and 324 of IPC. The accused pleaded not guilty to the charges.

5. Prosecution examined PWs 1 to 13, marked Exs.P1 to P16 and exhibited M.Os.1 to 7.

6. Appreciating the evidence and submissions of both side, the trial Court found the accused not guilty under Section 324 IPC. However, found him guilty under Section 302 IPC and sentenced him as already stated.

7. The learned counsel for the appellant would submit that this case is based on the evidence of two eye witnesses, namely P.Ws.5 and 7. However, in their evidence before the court, they did not implicate the accused. In the cross examination, P.W.12 also submitted that during his examination, P.Ws.5 and 7 did not say that they have witnessed the occurrence. There is no legal evidence to sustain the conviction. Thus, the conviction must go and the sentence imposed on him must also go.

8. On the other hand, the learned Additional Public Prosecutor would submit that on consideration of the oral and documentary evidence, the trial Court has recorded the finding and sentenced him accordingly.

9. We have anxiously considered the submissions of the learned counsel for the appellant and the learned Additional Public Prosecutor, perused the trial court's Judgement and also the entire materials on record.

10. Now the question is whether the prosecution has established the charge under Section 302 IPC as against the appellant beyond all reasonable doubts.

11. The deceased suffered death due to homicidal violence. (See Ex.P4 autopsy report).

12. Prosecution version is that the appellant had caused the death of the deceased by cutting his neck with M.O.4, knife.

13. The accused and main occurrence witnesses are close relatives. On the occurrence day, a relative of P.W.1, namely, Sakunthala died. Near the burial ground, there was gathering of relatives. At about that time, the accused rushed to the place, cut the neck of the deceased with M.O.4, knife and according to the prosecution this has been witnessed by P.Ws.5 and 7. When we read the evidence of P.Ws.5 and 7, there is no acceptable incriminating evidence linking the accused with this case. P.W.12, the investigating officer during his cross examination admitted that P.W.5 or P.W.7 did not say that they have witnessed the occurrence. When such is the position during the trial, a few witnesses tried to improve the case. P.W.5 did not inspire confidence in him. In his cross examination, P.W.7 admits that after the occurrence, he went to the occurrence place. Further, P.W.7's evidence is based on the evidence of P.W.1. But P.W.1 himself has not supported the prosecution

version of the case.

14. In the circumstances, prosecution has failed to establish the charge under Section 302 IPC framed as against the accused by acceptable legal evidence.

15. In view of the foregoing, this Criminal Appeal is allowed. The conviction under Section 302 IPC recorded by the learned Sessions Judge, Nagapattinam in S.C.No.86 of 2009 and the sentence awarded in the said case are set aside. The appellant is acquitted from the charge under Section 302 IPC. Fine amount, if already paid shall be refunded to him.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

kua/vaan

To

1. The District and Sessions Judge, Nagapattinam.
2. The Judicial Magistrate No.1,
Mayiladuthurai.
3. The Chief Judicial Magistrate,
Cuddalore (for information)
4. The Superintendent,
Central Prison, Cuddalore.
5. The Inspector of Police,
Mayiladuthurai Police Station,
Nagapattinam District.
6. The Additional Public Prosecutor,
High Court, Chennai.

Crl.A.No.270 of 2011

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