

Bail Slip

The Accused namely Viz.B.Loganathan was directed to be released on bail by this Hon'ble court made in MP NO.1/2014 in Crl.A.No.340/2011, dated 07.07.2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.340/2011

Loganathan

... Appellant/sole accused

Vs

State by

The Inspector of Police,
Palladam Police Station.
(Crime No.47/2000)

... Respondent/Complainant

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court No.V, Coimbatore, at Tiruppur, dated 17.02.2011, made in S.C.No.210 of 2010.

For Appellant : Mr.C.D.Sugumar

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.210 of 2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.V, Coimbatore at Tiruppur. He stood charged for offence under Section 302 of IPC. By judgment dated 17.02.2011, the trial court convicted him under Section 302 of IPC and sentenced him to undergo imprisonment for life and no fine was imposed. Challenging the said conviction and sentence, 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.Muthulakshmi. The accused is her husband. P.W.1 is the mother of the deceased. The appellant and his wife have two children. The appellant along with his wife and their children were residing in a house belonging to P.W.4. P.W.1 was residing in a different house by the side of the house where the deceased and the accused were residing. P.W.2 is a person, closely known to P.W.1, who was also residing along with P.W.1. The deceased was working in a Private Concern where P.W.5 was also then working. There was a talk among the workers in the said Concern that the deceased had illicit intimacy with one Anbu, who was a contractor in the said Concern. The deceased herself told the same to P.W.5 on several occasions and felt sorry for the same. According to the deceased, it was only a rumor. However, it came to the knowledge of the accused. Thus, the accused developed suspicion about the fidelity of the deceased. The accused also used to return home fully drunk and because of the said suspicion, he used to quarrel with the deceased on several occasions.

(b) One month prior to the occurrence, out of such quarrel, since she was beaten up by the accused, the deceased left for her parental home and she was residing along with her children at the house of P.W.1. After one month, that was on 12.01.2009 at 9.00 a.m., the accused came to the house of P.W.1, persuaded P.W.1 as well as the deceased and on the promise that he would not harass the deceased, he took the deceased to his house. Again at 6.00 p.m., on the same day, the accused had returned home in drunken state and quarreled with the deceased. Therefore, the deceased again came to the house of P.W.1. Then, P.W.1 and others intervened and persuaded the accused as well as P.W.1 not to quarrel. The accused promised to keep her well. Thus, by around 10.00 p.m., on the same day, the accused and the deceased alone had gone to their house for sleeping. After having ensured that the accused and the deceased had gone to bed for sleeping, P.W.1 returned to her house.

(c) On the next day morning, that was, on 13.01.2009, when the another daughter of P.W.1 had gone to the house of the deceased, the accused was not found in the house. When she entered into the house, to her shock, she found the deceased lying dead on a steel cot. There were extensive injuries on her body. Her second child was still sleeping by the side of the dead body, without knowing that the deceased was no more. There were blood stains on the child also. She informed P.W.1 about the same. P.W.1 rushed to the house and found the deceased lying dead. Thereafter, P.W.1 went to Palladam Police Station and made a complaint about the said occurrence.

(d) P.W.10, the then Sub-Inspector of Police of Palladam Police Station, on receipt of the said complaint under Ex.P.1 on 13.01.2009 at 08.30 a.m., registered a case in Crime No.47 of 2009 under Section 302 of IPC. Ex.P.13 is the First Information Report. He forwarded Ex.P.1 and Ex.P.13 to court which was received by the learned Chief Judicial Magistrate at 09.15 a.m. on 13.01.2009.

(e) P.W.11 took up the case for investigation on 13.01.2009 at 09.30 a.m., proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.7 and another witness, showing the place of occurrence. Then, he examined P.Ws.1 to 4 and recorded their statements. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(f) P.W.3 Doctor Balaji conducted autopsy on the dead body of the deceased on 13.01.2009 at 02.30 p.m. He found the following injuries:

'External Injuries :

1. Incised wound of about 3 c.m. x 1 c.m. x 3.5 c.m. depth on the right side of neck 5 c.m. above collar bone and 12 c.m. below right mastoid process right carotid artery exposed, walls injured and cut open with blood clot, edges of wound sharp ;
2. Incised wound about 2 c.m. x 1 c.m. x 2 c.m. depth in the right side of neck about 13 c.m. above right side of neck about 13 c.m. above right collar bone and 6 c.m. below right mastoid process wound edges, sharp edges;
3. An abrasion of about 5 c.m. about 10 c.m. above right collar bone and 2 c.m. below right femur bone;
4. Cut injury of about 2 c.m. x 1 c.m. x bone depth about 14 c.m. above right collar bone and 7 c.m. below right ear bone process just over angle of mandible ;
5. Cut injury of about 4 c.m. x 1 c.m. x 2 c.m. depth above right femur of mandible;
6. A cut injury above 4 x 1 x 2 c.m. over the right femur of mandible 3 c.m. from symphysis
7. Multiple linear incised wounds of about 2 c.m x 1 c.m. x 0.5 c.m. in the front portion of the neck;
8. Lacerated wound of about 6 x 3 x bone depth below right eye. Maxilla found broken;
9. Cut injury of about 7 c.m. x 3 c.m. x bone depth extending from dorsum of nose to left eye brow edges of wound-sharp;

10. Cut injury of about 3.5 c.m. x 0.5 c.m. over the dorsum of nose;

11. Cut injury of 6 c.m. x 2 c.m. seen in the upper lip;

12. Incised wound of about 7 x 1 x 1 c.m. extending to left cheek 2 c.m. above the tip of nose edges sharp;

13. Incised wound of about 7 x 1 x bone depth about 3 c.m. below lower lip with fracture of left part of mandible;

14. Cut injuries of about 4 c.m. x 2 c.m. x bone depth above 2 c.m. of symphysis;

15. Incised wound of about 3 x 1 x 1 c.m. edges sharp 3 c.m. below left of angle of mandible;

16. Incised wound of about 2 c.m. x 1 c.m. x 2 c.m. besides left eye.

Internal appearance : Ribs intact. Heart weighed 3 grams. Chambers empty. Lungs : right 450 gm. Left 400 gms. C/s pale. Hyoid bone : intact. Preserved for forensic analysis. Liver weight 1500 gms. Cut section pale. Spleen weight 110 grams Cut section pale. Kidney weight 150 gms. Cut Section pale. Stomach contains about 150 gms. Of undigested food particles. Intestine distended with gas. Bladder empty. Uterus normal in size. Cavity empty. Vagina Normal. No external injuries. Skull bones Vault intact. Membranes intact. Brain weight 100 gms.''

Ex.P.6 is the Postmortem Certificate. He gave opinion that the deceased would appear to have died due to shock and hemorrhage due to the injuries.

(g) P.W.11 recovered the blood stained clothes from the dead body of the deceased. Thereafter, the investigation was taken up by P.W.12. On 21.04.2009, at 11.30 a.m., P.W.12 arrested the accused in the presence of P.W.1 and another witness and on such arrest, he disclosed the place at where he had hidden an Aruval and a blood stained shirt. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced M.O.13 Aruval and M.O.14 Shirt and P.W.12 recovered the same under a Mahazar. On returning to the police station, he sent the accused to court for judicial remand and handed over the material objects to court. He made a requisition to the court to forward the material objects for chemical examination. The report revealed that there was human blood of 'A' group found on all the material objects including the Aruval and the shirt recovered. On completing the investigation, P.W.12 laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed a lone charge as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 12 witnesses were examined and 17 documents and 14 material objects were also marked.

4. Out of the said witnesses, P.Ws.1, 2 and 4 have stated about the frequent quarrels between the deceased and the accused. They have further stated that on the day of occurrence, the deceased and the accused alone were there in their house along with their second child. According to their further evidence, on the next day morning, they found the dead body of the deceased with injuries. The child was sleeping by the side of the dead body of the deceased. The accused was not found anywhere. P.W.1 has spoken about the complaint made by her and the registration of the case. P.W.3 has spoken about the postmortem conducted by him and his final opinion regarding the cause of death. P.W.4 has stated that the deceased and the accused were living in the house belonging to him as tenant and the neighbouring house also belongs to him where P.W.1 was residing. He has also spoken to the fact that the accused and the deceased alone were there at the time of occurrence. P.W.5 has spoken about the motive. She has extensively spoken about the suspicion that the accused had in respect of the fidelity of the accused. P.W.6 has stated that on 12.01.2009 at 11.00 p.m., he found the accused somewhere going around with a handbag. P.W.7 has spoken about the preparation of the Observation Mahazar and the Rough Sketch. P.W.8 has spoken about the arrest of the accused on 21.04.2009, the disclosure statement made by him and the consequential recovery of M.O.13 and M.O.14. P.W.9 has stated that he took the dead body of the deceased for postmortem. P.W.10 has spoken about the registration of the case on the complaint of P.W.1. P.W.11 and P.W.12 have spoken about the investigation done by them and the final report filed.

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 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. This is a case based on circumstantial evidence. Admittedly, lastly the deceased and the accused alone were in their house along with their second child. It has been spoken by P.Ws.1, 2 and 4. On the next day morning, the dead body of the deceased alone was found. There were injuries all over the body. According to the Doctor, the death was due to shock and hemorrhage due to the injuries. Thus, the death had occurred sometime after 9.00 p.m. on 12.01.2009 and before 6.00 a.m. on the next day.

9. In order to prove that the accused has only caused the death of the deceased, the prosecution mainly relies on the evidence of P.W.1, P.W.2 and P.W.4 who have stated that on 13.01.2009, early in the morning, when the dead body of the deceased was found, the accused was not in the house. By about 11.00 p.m. on 12.01.2009, he was found moving somewhere near the place of occurrence by P.W.6. The accused has got no explanation as to why he was absconding during the said time. This conduct of the accused gives rise to a presumption under Section 115 of the Indian Evidence Act that it was, this accused, who caused the death of the deceased. Of course, this presumption is rebuttable. But the said presumption has not been rebutted by the accused either by means of letting in any evidence or other circumstances available on record. Thus, the said unrebutted presumption clearly establishes the fact that it was this accused who caused the death of the deceased between the night intervening 12.01.2009 and 13.01.2009. This conclusion is further fortified by the recovery of M.Os.13 and 14 based on the disclosure statement made by the accused. Thus, we hold that the prosecution has clearly proved that this accused has only caused the death of the deceased by causing injuries all over the body.

10. Next, the question is as to what was the offence that the 1st accused had committed by the said act. From the medical evidence, it is crystal clear that there were injuries on the vital part of the body that was on the neck. According to the Doctor, these injuries were sufficient to cause death in the ordinary course of nature. Thus, the act of the accused would fall under the 3rd limb of Section 300 of IPC. We do not find any material to hold that the act of the accused would fall under any one of the exceptions of Section 300 of IPC. The appellant is liable to be punished under Section 302 of IPC.

11. Now turning to the quantum of punishment, in our considered view, the trial court has imposed only a minimum punishment which does not require any interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

12. In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentenced imposed by the trial court are hereby confirmed. The trial court is directed to secure the accused to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate, Palladam.
2. -do-Thro-The Chief Judicial Magistrate, Coimbatore.
3. The Additional District and Sessions Judge, Fast Track Court No.V, Coimbatore, at Tiruppur
4. -do-Thro The District and Sessions Judge, Coimbatore.
5. The Superintendent, Central Prison, Coimbatore.
6. The Inspector of Police, Palladam Police Station. Coimbatore.
7. The Superintendent of Police, Coimbatore.
8. The District Collector, Coimbatore.
9. The Director General of Police, Mylapore, Chennai 4.
- 10.The Public Prosecutor, High Court, Chennai.
- 1 cc to Mr.C.D.Sugumar, Advocate, sr.20140

Cr1.A.No.340/2011

scd co
kra 13.06.2016