

BAIL SLIP

That the Appellant herein/Accused Viz., Ilayaraja was directed to be released on bail as per the Order of this Court dated 15.02.2012 and made in M.P.No.1 of 2011 in CrI.A.No.729 of 2011 etc., as stated within.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE.M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE.S.NAGAMUTHU

CrI.A.No.729 of 2011

Ilayaraja Appellant/Sole Accused

Versus

State rep. by Inspector of Police,
K3, Aminjikarai Police Station,
Chennai-29. ... Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment of conviction and sentence imposed by the Sessions Judge, Mahalir Needhimandram, Chennai, dated 21.9.2011, in S.C.No.472 of 2007.

For appellant : Mr.S.Ananthanarayanan

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

(Judgment of the court was made by M.Jaichandren,J)

This Criminal Appeal has been preferred against the judgment passed by the Sessions Judge, Magalir Neethimandram, Chennai, dated 21.9.2011, in S.C.No.472 of 2007, convicting the appellant/accused for the offence under Section 302 IPC, sentencing him to undergo life imprisonment and a fine of Rs.10,000/-, and in default to undergo simple imprisonment for a further period of six months.

2. The brief facts of the case are as follows:-

2.1) The victim Manjula was living at No.31, H Block, Shenoy Nagar, Chennai. The husband of the victim Manjula had died one and half years prior to the occurrence. She had a daughter by the name Ramasri, aged about 5 years and a son by the name Sri Ram aged about 4 years. The victim Manjula was doing house hold work as a servant maid at Sams Bright Apartment at Shenoy Nagar belonging to one Pushpagandhi (P.W.5). The accused was the son of her younger mother-in-law.

2.2) Six months prior to the occurrence, the accused had developed an affair with the victim Manjula. While so, the accused had instructed the victim Manjula not to go outside her house. However, a day prior to the occurrence, the victim Manjula had come down from her house at 9.00 p.m in search of her sister's son Surendar aged about 16 years. On coming to know about the said incident, the accused had gone to Sams Bright apartment at Shenoy Nagar, on 17.3.2007 at about 7.30 a.m, where the victim Manjula was working as a servant maid. He had taken her to the open terrace of the said building and had questioned her act. In the course of said talks, he had slapped her stating that she had disobeyed his instruction not to leave the house and while the victim had fallen down, the accused had kicked her in the stomach and on her head, whereupon the victim Manjula had sustained serious injuries, including injuries to her spinal cord.

2.3) On hearing the noise from the terrace, the flat owner Pushpagandhi (P.W.5) proceeded to the terrace, during which time, the accused who was getting down the stairs in a disturbed state had informed her that the victim Manjula had fallen down. In the meantime the aunt of the victim, namely Kodiya (P.W.2), had come to the terrace on hearing the noise and having failed in the attempt of bringing down the victim Manjula from the terrace, she had gone and informed Karuna (P.W.1), the mother of the victim Manjula. Thereafter, Karuna (P.W.1), the mother of the victim Manjula, had gone to the house of her another daughter Sasikala (P.W.6) and with the assistance of her husband Selvam (P.W.3) had gone to the terrace and after enquiring the victim Manjula about the incident took steps to bring down the victim Manjula from the terrace and had taken her to the Kilpauk Medical College Hospital. Thereafter, they were directed to go to Government General Hospital, where the victim Manjula was admitted as an inpatient.

2.4) On intimation from the hospital authorities, P.W.13, the Sub Inspector of Police had proceeded to the Hospital and recorded the statement of the victim Manjula. He then registered a case, in Crime No.151 of 2007, for

the offence under Sections 341, 323 and 325 of I.P.C., on 18.3.2007, at about 1.30 a.m. After forwarding the First Information Report and the complaint to the Court, P.W.13, took up the investigation and went to the scene of occurrence. Observation Mahazar and Rough Sketch were prepared in the presence of the witnesses. The witnesses Karuna, Kodiya, Selvam, Lakshmanan, Pushpagandhi, Thandavamurthy, Charles were examined. Dr.Mohan, the Casualty Medical Officer was also examined. Thereafter, a request had been made to the Metropolitan Magistrate to record the dying declaration on 19.3.2007. Whereupon, the VI Metropolitan Magistrate (P.W.14) had recorded the dying declaration of the victim Manjula, after ascertaining the mental state of the victim with the Doctor. On completion of the same, the further investigation was handed over to P.W.15, the Inspector of Police.

2.5) P.W.15, on receipt of the information from the Hospital authorities that the victim Manjula had died on 25.3.2007, had altered the charges and had sent an alteration report to the Court concerned. He then went to the hospital and had conducted an inquest in the presence of the witnesses. The statements of Karuna (P.W.1), Sasikala (P.W.6) and Jayanthi (P.W.8) were recorded, after interrogation. P.W.15 took photos of the dead body and had made arrangements to send the body for postmortem. On completion of the postmortem, the body was handed over to the Grade I Constable Sri Ram. The recovery of the dresses worn by the deceased were made under Form No.95 by P.W.15.

2.6.) P.W.12 was interrogated on 26.3.2007 and her statement was recorded. On coming to know that the accused had surrendered before the court, on 9.4.2007, P.W.15 had filed a petition seeking police custody of the accused and the same was ordered. The accused had given his confession during the custody and the same was recorded in the presence of the witnesses. The Doctors examined as P.W.11 and P.W.12 were interrogated. After getting the information that the victim had died due to the fracture in C5 and C6, he had completed the investigation and had filed a final report against the accused for the offence under Section 302 of the Indian Penal Code, before the V Metropolitan Magistrate, Egmore, Chennai.

2.7) In order to prove the charge levelled against the accused, the mother of the deceased Manjula had been examined as P.W.1. P.W.1, namely, Karuna, the mother of the deceased Vanaja, had stated, during her chief examination, that the deceased was her daughter. The deceased Manjula had two children. The husband of the deceased had died earlier. The deceased Manjula was working in front of her house in an apartment owned by P.W.5, Pushpagandhi. On 17.3.2007 at about 6.00 a.m. the deceased went to the house of P.W.5 for working. At about

7.45 a.m, the sister of P.W.1, namely, Kodiya, had informed P.W.1 that the deceased was in a fainted state in the terrace. Thereafter, P.W.1 took P.W.3, namely Selvam, who is the son-in-law of P.W.1, and her daughter, namely Sasikala, examined as P.W.6, to the terrace of an apartment owned by P.W.5, where she had found the deceased lying inactive. On questioning the deceased, it was informed that the accused had slapped her and kicked her on her stomach. While she was holding her stomach and trying to sit down, the accused had hit her on her head and thereafter, she had lied down. Subsequently, with the assistance of P.W.3, the deceased was brought down from the terrace and was taken to the Kilpauk Medical College Hospital. On instructions from them, the deceased was taken to Government General Hospital, where the deceased was admitted. Thereafter, on 25.3.2007, the deceased had died.

2.8. P.W.2, is the sister of P.W.1, who has deposed evidence stating that the deceased is the daughter of her younger sister. On 17.3.2007 at about 7.30 a.m, she went to terrace on hearing the noise. At that time, she saw the accused coming down in a frustrated state, stating that the deceased had fainted down. Upon reaching the terrace, she had found the deceased lying down. She along with P.W.5, who had come to the terrace by then tried to lift the deceased. When they had questioned about the occurrence, she had stated that the accused had slapped her and kicked her on her stomach. While she was holding her stomach and trying to sit down, the accused had hit her on her head and thereafter, she had lied down. Thereafter, she went to the house of P.W.1, who is none other than her younger sister and had informed about the occurrence. Then P.W.2, along with P.W.1 and P.W.3 went to the terrace and took the deceased to the hospital.

2.9. P.W.3, Selvam, who is the son-in-law of P.W.1 had deposed that on 17.3.2007, he went to the terrace where the deceased was lying upon the request made by P.W.1. He had assisted in bringing the deceased from the terrace and took her to the Hospital for treatment.

2.10. P.W.4, Lakshman, who is the Watch Man of the Apartment, where the deceased was working had deposed that he had seen P.W.1, P.W.3 and P.W.6 taking the deceased in an auto. On enquiry, he was informed that the deceased had fainted down.

2.11) P.W.5, Pushpaganthi, the owner of the Apartment where the deceased was working had stated in her evidence on 17.3.2007 at about 7.30 a.m. she had heard a sound from the terrace. At that time, she had seen the accused coming down from the terrace stating that the deceased had fallen down. Thereafter, she had informed P.W.2, who was working adjacent to her apartment. Later, the deceased was taken to the hospital by her relatives.

2.12) P.W.6, Sasikala, the sister of the deceased had stated that at 7.45 a.m. when she was in her house, P.W.1, her mother had informed about the occurrence. Thereafter, she along with her husband P.W.3 had went to the terrace and took steps to take the deceased to the hospital.

2.13) P.W.7, Charles, is the witness who had attested the Observation Mahazar marked as Ex.P.1. P.W.8, Jeyanthi, is the sister of the deceased. She had stated that on coming to know about the occurrence she went to the hospital, where the deceased was admitted, wherein she was informed by P.W.1 that the accused had beaten the deceased on her stomach and head. P.W.9, is the Doctor who was present at the time of recording the dying declarations and that she has made endorsements marked as Exs.P2 and P3 certifying that the deceased was in a conscious state. P.W.10, is the Doctor, who had deposed stating that on 17.3.2007 at about 8.50 a.m she had examined the deceased and had referred her for taking X-ray on her head. He has admitted the deceased in the Hospital as in patient and had issued the accident register, marked as Ex.P-4.

2.14) P.W.11, is the Doctor who had certified that on 25.03.2007 at about 5 a.m. the deceased had died. He had issued Ex.P-5, the death certificate. P.W.12, is the Doctor who had conducted postmortem on the deceased. She had given her opinion that the death would have occurred due to the injuries sustained in C5 and C6 vertebra and she had issued the death certificate, marked as Ex.P6.

2.15) P.W.13, is the Inspector who had deposed stating that on 17.3.2007, at about 10.50 a.m. on information from the Government General Hospital, he went to the hospital and recorded the statement from the deceased. Ex.P-9 is the complaint given by the deceased. Based on the complaint received, he had registered a case, in Crime No.151 of 2007, for the offence under Sections 341, 323 and 325 I.P.C, marked as Ex.P-10. He then went to the apartment where the deceased was said to have been assaulted and prepared a rough sketch marked as Ex.P-11. Then he had examined the witnesses P.W.1, P.W.2, P.W.3, P.W.5, P.W.6 and the Doctor P.W.10. Ex.P-12 is the requisition made by him to the VI Metropolitan Magistrate to record the dying declaration from the deceased on 19.3.2007.

2.16) P.W.14, is the VI Metropolitan Magistrate who had recorded the dying declaration from the deceased on 19.3.2007. He had deposed that he had recorded the dying declaration after ascertaining the mental fitness. Ex.P-2 is the endorsement of the Doctor who had certified the mental fitness. The dying declaration had been marked as Ex.P-14.

2.17) P.W.15 is the Inspector of Police who had altered the offences to Sections 341, 323, 325 and 302 IPC, upon receiving the information that the deceased had died on 25.3.2007. Ex.P-15 is the alteration report.

Thereafter, he had went to the hospital and had examined the witnesses. The inquest report had been marked as Ex.P-16. Then he had sent the body of the deceased for postmortem. He had also taken photographs of the deceased marked as M.O.1 series. Since the accused had surrendered before the V Metropolitan Magistrate, he had requested for police custody and recorded his statement on 9.4.2007. He had examined the postmortem Doctor who had stated that the death would have occurred due to the injuries sustained by the deceased. On completion of the investigation, he had laid the final report against the accused. On the side of the prosecution 6 documents had been marked, as exhibits. Two material objects had also been marked.

2.18) When the incriminating evidence available on record had been put to the accused under Section 313 Cr.P.C, the accused had denied his involvement in the commission of the offence. Two witnesses had been examined and six documents had been marked on behalf of the accused.

2.19) Based on the evidence available, the trial Court had convicted the accused, Ilayaraja, the appellant in the present criminal appeal for the offence under Section 302 I.P.C., for causing the death of the deceased Manjula and sentenced him to undergo life imprisonment. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

3. The contention of the learned counsel appearing on behalf of the appellant is that the deceased, Manjula, had given different versions about the alleged incident. Before the Doctor P.W.10, at the time when she was in the hospital she had stated that she had fallen in the open terrace. While giving the dying declaration to P.W.14, the learned Judicial Magistrate, she had stated that only after her sister had stated that the accused had informed about the entire incident to her over phone, she had come out saying that the appellant had slapped her on the cheek and kicked her on the stomach and head. Even at the initial point of time when P.W.5 Pushpagandhi had seen the accused coming down the terrace, it was stated that the victim had fallen down. Thereafter, when P.W.5, went to the terrace, the victim had informed that she had fallen in the open terrace. Therefore, in the absence of any other evidence to connect the accused to the crime, the conviction of the appellant, by the trial Court, under Section 302 I.P.C, cannot be sustained, especially, when the dying declaration made by the deceased cannot be trusted. As such, it is clear that the case of the prosecution had not been proved beyond reasonable doubt. Therefore, the conviction of the appellant, by the trial Court, by its judgment, dated 22.9.2011, made in S.C.No.472 of 2007, cannot be sustained and therefore, it is liable to be set aside.

4. Per contra, the learned Additional Public Prosecutor, appearing on behalf of the respondent, had stated that it is clear from the dying declaration of the deceased, Manjula, that the accused had come to the terrace and during the course of their talks, he had slapped her on her cheek and kicked her on the stomach and head. He had further stated that, from Exhibits P-2 and P-3 it could be seen that the deceased, Manjula, was in a fit, conscious and capable state of mind, while making a statement that the accused had hit her on the head. It is also clear from the dying declaration made by the deceased, marked as Ex.P-14, that it is the accused, who had assaulted her and caused the injuries as stated by her. As such, the judgment of the trial Court, dated 21.09.2011, convicting and sentencing the accused, under Section 302 I.P.C., is valid and sustainable in the eye of law. Therefore, the present criminal appeal is liable to be dismissed.

5. In this case, there is no eyewitness to the occurrence. The prosecution mainly relies on the dying declaration made by the deceased to P.W.14, wherein, the deceased had stated that the accused kicked her repeatedly which resulted in the injuries. But, at the earliest point of time, when P.W.5 found the deceased lying on the terrace, the deceased told her that accidentally she had fallen down. Subsequently, when she was taken to the Doctor by P.Ws.2 and 3, again, she told the Doctor that she sustained injuries by an accidental fall on the terrace of the house. Thus, the earliest statements made by the deceased which also amount to dying declaration would go to show that the deceased had fallen from the terrace and sustained the injuries. The Doctor who conducted postmortem has also opined that by falling these injuries could have been caused. The medical evidence thus probabilies the defence.

6. After a long time, the deceased gave the judicial dying declaration. In the said statement itself, she had stated that when her sister came to the house and when she enquired, she told her that she had fallen from the terrace and sustained injuries. Thus, until the arrival of the sister of the deceased to the hospital, the deceased was all along maintaining that she fell down from the terrace and sustained the injuries. In the dying declaration she has further stated that her sister told her that she had information that the accused kicked her and that is how she had sustained the injuries. She has further told that this information was passed on to her by the accused himself. Only after the said information and on the persuasion of her sister, the deceased changed her mind and gave the statement for the first time to the learned Judicial Magistrate that the accused kicked her

and out of which, she sustained injuries in the neck. This would only go to show that the judicial dying declaration given by the deceased was not voluntary, but on being tutored by her sister. Therefore, we find it difficult to give any weightage to the said judicial dying declaration.

7. P.Ws.1 to 3 have stated that when they went to the terrace of the house of P.W.4, the deceased was lying and with folded hands she stated that the accused kicked her and that was how she sustained injuries. This evidence of P.Ws.1 to 3 cannot be believed as the deceased herself has stated in the dying declaration that until her sister came to the hospital, she was maintaining that she sustained injuries only by a mere fall. Had it been true that the deceased had told P.Ws.1 to 3 that she sustained injuries on account of kicking by the accused, then, when the deceased was produced before the doctor, P.Ws.1 to 3 would have told the doctor that the deceased sustained injuries due to kicking by the accused. From the fact that in the very presence of P.Ws.1 to 3, the deceased told the doctor that she sustained injuries by fall and the very fact that she was maintaining the same statement until the arrival of her sister on the next day, it is difficult to believe P.Ws.1 to 3 who have stated that the deceased told them that the accused kicked her and caused the injuries.

8. In view of the same, we find it difficult to sustain the conviction against the accused. We hold that the prosecution has failed to prove the case. In the result, this criminal appeal is allowed. The conviction and sentence imposed on the appellant is set aside and he is acquitted of the charge. The bail bond, if any, executed by him, shall stand cancelled and the fine amount, if any, paid by him, shall be repaid to him.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

csh

To

1.The Sessions Judge,
Mahalir Needhimandram,
Chennai.

2.-Do- Through The Principal
Sessions Judge,
Chennai.

3.The Metropolitan Magistrate,
Egmore, Chennai 08.

4.-Do- Through the Chief Metropolitan
Magistrate,
Egmore, Chennai 08.

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

6.The Inspector of Police,
K-3 Police Station,
Aminjikarai, Chennai 29.
(Crime No.151 of 2007)

7.The District Collector,
Chennai.

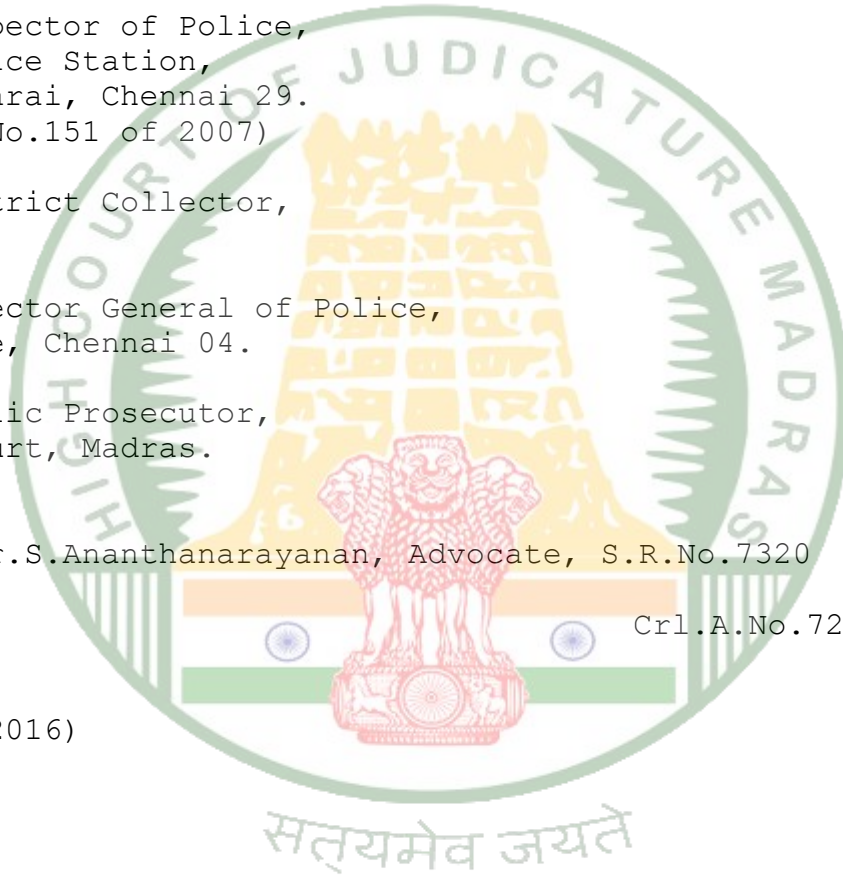
8.The Director General of Police,
Mylapore, Chennai 04.

9.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Ananthanarayanan, Advocate, S.R.No.7320

Crl.A.No.729 of 2011

UG(CO)
CA(04/07/2016)



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