

BAIL SLIP

The Appellant herein namely Silambarasi, Accused in SC.No.1/14 on the file of the District and Sessions Judge, Nagapattinam was released on bail as per order of this Court dt.25.6.2015 made in CrI.MP.No.1/15 in CrI.A.No.101/15.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.101/2015

Silambarasi .. Appellant/sole accused

Vs

State by
The Inspector of Police,
Tittacheri Police Station,
Tittacheri. .. Respondent/Complainant

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned District and Sessions Judge, Nagapattinam, made in S.C.No.1 of 2014 dated 07.01.2015.

For Appellant : Mr.R.Sankarasubbu

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.1 of 2014 on the file of the learned District and Sessions Judge, Nagapattinam. She stood charged for offences under Sections 302 and 201 of IPC. By judgment dated 07.01.2015, the trial court convicted her under Section 302 of IPC and sentenced her to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for one year. The trial court, however, acquitted her from the charge under Section 201 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 Tamilvanan. The accused is his wife. They have got two children born out of the said wedlock. The accused and the deceased, along with their children, were residing at Ganapathipuram Village in Nagapattinam District. The accused was a drunkard and he used to harass the accused both physically and sexually while in drunken state. Because of this, there arose misunderstanding between them. This is stated to be the motive for the occurrence. Out of the said motive, it is stated that the accused decided to kill her husband.

(b) Accordingly, on 09.10.2013 at 11.00 p.m., in a quarrel between the accused and the deceased, the accused held the head of the deceased and dashed the same against a wall repeatedly. The accused fainted and died instantaneously. In order to erase the evidence and to misdirect the police, according to the prosecution, the accused hanged the dead body by using a sari.

(c) P.W.1 is the mother of the deceased. She was residing at Melaperunattan Thoppu Village. According to her, on the date of occurrence, P.W.1 had gone to the house of the deceased where she witnessed the entire occurrence. On a complaint made by her, P.W.11, the then Sub-Inspector of Police, registered a case in crime No.348 of 2013 for offences under Sections 302 and 201 of IPC. Ex.P.10 is the First Information Report. He forwarded both the documents to court.

(d) P.W.12 took up the case for investigation, went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.6 and another witness. Then, he examined P.Ws.1 to 5 and recorded their statements. He conducted inquest on the body of the deceased between 08.00 a.m. and 09.00 a.m. on 11.10.2013.

(e) P.W.9 Doctor conducted autopsy on the dead body of the deceased on 11.10.2013 at 12.30 0.m. He found the following injuries:

''External Injuries:

1. Contusion seen over occipital region.

2. Depressed fracture of skull seen over right frontal region.

Eyelids closed. No fluid from ear. Tongue placed with the mouth.

Teeth intact. Hyoid Bone intact.

Internal Examination :

No rib fracture. Abdomen uniform. Liver - 1500 gms liquid c/s. congested. Spleen 120 gms c/s.congested.

Stomach and its contents : About 500 ml. of food particles present.

Intestine filled with gas. Bladder - empty. Skull - Depressed fracture over right frontal region.

Brain 400 gms. c/s. congested. Hemorrhage seen over right frontal region."

Ex.P.8 is the Postmortem Certificate. He gave opinion that the death of the deceased was due to the injury to vital organ.

(f) P.W.12 continued the investigation, arrested the accused and forwarded her to court for judicial remand and on completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges 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 14 documents and 1 material object were also marked.

4. Out of the said witnesses, P.W.1 the mother of the deceased has stated that the accused dashed the head of the deceased against the wall and as a result of the same, the deceased died. P.W.2 has stated that when she went to the house of the deceased, she found the deceased dead. P.W.3, a neighbour, has not stated anything incriminating except stating that the deceased was found lying dead inside his house. P.W.4 has also spoken about the hearsay information. P.W.5 has spoken about the arrest of the accused. He has turned hostile. P.W.6 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. P.W.7 has stated that he handed over the FIR to the learned Magistrate at 11.45 a.m. on 10.10.2013. P.W.8 has stated that he took the dead body of the deceased to hospital and handed over the same for postmortem. P.W.9 has spoken about the postmortem conducted by him and his final opinion regarding cause of death. P.W.10 the Forensic Expert has stated that he examined the vital organs and found that there was neither alcohol nor poison found in the same. P.W.11 has spoken about the registration of the case. P.W.12 has spoken about the investigation done and the final report filed by him.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., she denied the same as false. Her defence was a total denial. However, she did not choose to examine any witness nor to mark any document on her side. 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.

6. 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.

7. As we have already pointed out, the prosecution relies only on the evidence of P.W.1 who has stated that the accused dashed the head of the deceased against the Wall. The learned Counsel for the appellant would submit that P.W.1 was a resident of Melaperunattan Thoppu Village, which is a far off from the place where the deceased was residing with the accused. He would further submit that the presence of this witness at the place of occurrence is highly unbelievable. In order to substantiate this contention, the learned Counsel for the appellant would point out that there was enormous delay in preferring the complaint. We find some force in the argument of the learned Counsel for the appellant.

8. Though it is stated that the occurrence was at 11.00 p.m. on 9.10.2010, the complaint was made to the police only at 05.30 p.m. on 10.10.2013. Absolutely, there is no explanation for such a long delay in making the complaint. This creates doubt in the very presence of P.W.1 at the place of occurrence. When the evidence of a solitary witness becomes so doubtful, then the court should look for corroboration from any other independent sources. But, absolutely, there is no other evidence to corroborate the evidence of P.W.1.

9. In our considered view, the presence of P.W.1 at the place of occurrence is doubtful and therefore, it is difficult to believe her. Above all, the medical evidence also is not in consonance with the evidence of P.W.1. Thus, we hold that the prosecution has failed to prove the case beyond all reasonable doubts and therefore, she is entitled for acquittal.

10. In the result, the appeal is allowed and the appellant is acquitted. The conviction and sentence imposed on the accused by the trial court are set aside. The bail bond, if any executed by the accused, shall stand discharged. The fine amount, if any, paid by the accused, shall be refunded to the accused.

Sd/- (CS V)

/true copy/

Sub Asst. Registrar

To

1. The District and Sessions Judge,
Nagapattinam.

2.The Judicial Magistrate No.2
Nagapattinam.

3.The Chief Judicial Magistrate,
Nagapattinam.

4.The District Collector,
Nagapattinam.

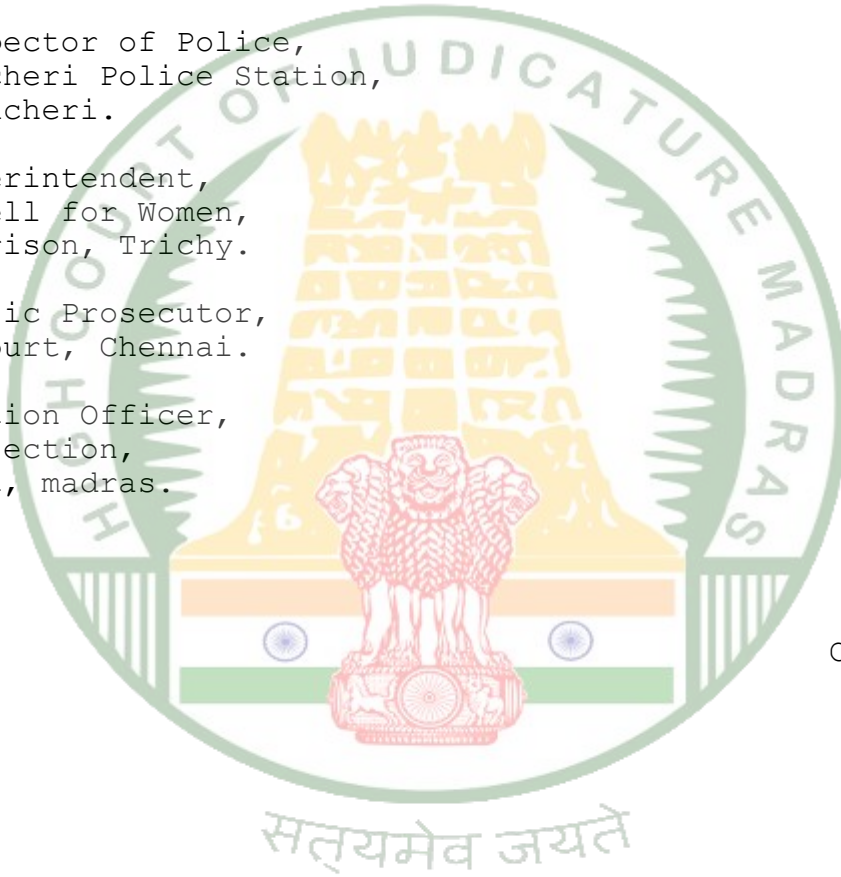
5.The District General of Police,
Mylapore, Chennai.

6.The Inspector of Police,
Tittacheri Police Station,
Tittacheri.

7.The Superintendent,
Special Cell for Women,
Central Prison, Trichy.

8.The Public Prosecutor,
High Court, Chennai.

9.The Section Officer,
Criminal Section,
High Court, madras.



Judgment in
Crl.A.No.101/2015

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