

BAIL SLIP

The Appellant/Accused was directed to be released on Bail in and by the Order of this Court dated 28.10.2015 made in MP.1/2015 in CrI.A.400/2015 on the file of the High Court of Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.400 of 2015

Rangasamy

..

Appellant/Accused

Vs

State by:

Inspector of Police,
Malayampalayam Police Station,
Erode District

(Crime No.161 of 2013)

.. Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment passed by the learned Sessions Judge (Mahalir Fast Track), Erode in S.C.No.87 of 2014 dated 11.05.2015.

For Appellant : Mr.B.Vasudevan

For Respondent : Mr.M.Maharaja,

Additional Public Prosecutor

JUDGEMENT

(Judgment of the Court was delivered by S.Nagamuthu.J)

The appellant is the sole accused in S.C.No.87/2014 on the file of the learned Sessions Judge (Mahalir Fast Track), Erode. He stood charged for offence under Section 302 I.P.C. The trial Court by judgment dated 11.05.2015, convicted the accused for offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for six months. 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:-

The deceased in this case was one Mrs.Rasammal. She was the wife of the accused. The accused and the deceased were residing at Malayapalayam Village in Namakkal District. Due to some matrimonial misunderstanding between the deceased and the accused, the deceased left the house of the accused came to Pasur Village in Erode District and stayed with P.W.2 at her house.

3.On 20.10.2013, the accused came in his TVS Motorcycle to the house of P.W.2, met his wife/the deceased and wanted her to come with him to go to his house so as to continue the matrimonial life. The deceased refused to come with the accused. She further told him that already she issued a legal notice to him, in respect of the above matrimonial dispute. This resulted in a quarrel. In that quarrel, it is stated that the accused took a knife and stabbed the deceased twice on her left shoulder. The deceased succumbed to the injuries instantaneously. Leaving the dead body there, the accused ran away from the scene of occurrence, in his motorcycle. P.Ws.1 to 3 witnessed the said occurrence.

4.P.W.1 thereafter, went to Mahalir Police Station in Erode District and made a complaint at 9.00 am on 20.10.2013. P.W.13, the then Inspector of Police on receipt of the said complaint, registered a case in Crime No.161/2013 for offence under Section 302 I.P.C., against the accused. Ex.P.1 is the complaint and Ex.P.7 is the F.I.R. P.W.13 forwarded both the documents to Court which were received by the learned Judicial Magistrate on 20.10.2013 at 12 30.pm.

5.P.W.13 took up the case for investigation. He proceeded to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.9 and another witness. He recovered the Suri knife lying at the place of occurrence, a

pair of chapels then, he conducted inquest on the body of the deceased and forwarded the same for post mortem.

6.P.W.7 - Dr.Ravichandar conducted autopsy on the body of the deceased on 20.10.2013 at 1.50 pm and he found the following injuries:-

"External Injuries:-

Clean cut lacerated wound with sharp margins around 3 cms at the level of angle of left scapula with a depth of 3 cms admitting two fingers deep edges are red in colour. Parallel to ribs.

2.Clean cut lacerated wound at level of lateral condyle of humerus (left) just 1 cms above elbow 3x3x1 cm. Edges are red in colour.

3.Abrasion over right knee joint 2 x 3 cm."

Ex.P.5 is the post mortem certificate. P.W.7 gave opinion that the death was due to shock and hemorrhage due to the injuries.

7.During the course of investigation, P.W.13 arrested the accused on the same day at 3.00 pm, in the presence of same witnesses. P.W.13 recovered the Motorcycle from the accused. Then the accused made a disclosure statement in which, he disclosed the place where he had hidden the blood stained shirt. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the blood stained shirt (M.O.11). Thereafter, P.W.13 forwarded the accused to Court for judicial remand. The material objects recovered were sent for chemical examination. The report revealed that there were human blood stains in all the Material Objects including the knife (M.O.2). The investigation was continued by P.W.14, the then Inspector of Police. P.W.14 continued the investigation and laid charge sheet against the accused.

8.Based on the above materials, the trial Court framed a lone charge for offence under Section 302 I.P.C., against the appellant. The appellant denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 14 witnesses were examined and 15 documents were exhibited, besides 11 Material Objects.

9. Out of the said witnesses, P.Ws.1 to 3 are the eye witnesses to the occurrence. But, P.W.2 has turned hostile and she has not supported the case of the prosecution in any manner. P.Ws.1 & 3 have spoken vividly about the entire occurrence. P.W.4 has stated that he examined all the Material Objects which were forwarded to him and found that there were human blood stains in all the Material Objects. P.W.5 - the then Head Clerk of the learned Judicial Magistrate has stated that he forwarded the Material Objects on the orders of the learned Judicial Magistrate to the Forensic Lab for chemical examination. P.W.6 is the resident of Pachampalayam Karadu Village and he has not stated anything incriminating against the accused. P.W.7 has spoken about the Post Mortem conducted by him on the body of the deceased and his final opinion regarding the cause of death. P.W.8 is the sister of the deceased and she has turned hostile and she has not supported the case of the prosecution in any manner. P.W.9 has spoken about the preparation of observation mahazar and the recovery of material objects at the place of occurrence. P.W.10 has stated that he handed over the F.I.R., to the learned Judicial Magistrate on 20.10.2013 at 12.30.p.m. P.W.11 has stated that he took the dead body from the place of occurrence and handed over the same to the Doctor for post mortem. P.W.12 has spoken about the photographs taken by him at the place of occurrence. P.W.13 has spoken about the registration of the case and the investigation done by him. P.W.14 has spoken about the further investigation and the final report filed by him in this case.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On his side, he himself was examined as D.W.1 and one Mr. Ravikumar was examined as D.W.2. In his evidence, the accused has stated that the deceased had eloped with one Mr. Thangaraj two years prior to the occurrence. He has further stated that his son Mr. Ravikumar informed him that the deceased was stabbed and killed by Mr. Thangaraj. D.W.2 is the son of the accused. He has stated that on 20.10.2013, at about 5.00 am, one Mr. Sathish informed him over phone that Mr. Thangaraj had stabbed the deceased and killed her. However, no document was marked on the side of the accused.

11. Having considered all the above, the trial Court found the accused/appellant guilty under the said charge and accordingly, sentenced him as detailed in the first paragraph of this judgment. That is how the appellant is before this Court with this Criminal Appeal.

12. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

13. In this case, the prosecution mainly relies on the evidences of P.Ws.1 & 3 who are the eye witnesses to the occurrence. It is in their evidence that on account of some matrimonial dispute between the deceased and the accused, the deceased had come to the house of P.W.2 and she was staying at Pasur Village. They have further stated that the accused came to the place of occurrence and wanted his wife/the deceased to come with him to continue the matrimonial life. They have also stated that the deceased told him that she had already issued a legal notice and thus, she is not willing to continue the marital ties with him. This infuriated the accused. In respect of the same, there was a quarrel between the accused and the deceased. In that quarrel, the accused stabbed the deceased with knife. We do not find any reason to reject the evidence of P.Ws.1 & 3. Though, they have been cross examined at length, we do not find any material at all in their evidences to doubt their credibility.

14. The learned counsel for the appellant would refer to the evidences of D.Ws.1 & 2 wherein, they have stated that one Mr. Thangaraj, stabbed the deceased and killed her. D.W.1 is none other than the accused himself and D.W.2 is his son. In a very vague manner, D.W.2 has stated that one Mr. Satheesh informed him over phone that Mr. Thangaraj had stabbed the deceased and killed her. Further, it is in the evidence of D.W.1 that D.W.2, his son informed him that the deceased was killed by Mr. Thangaraj. Thus, D.Ws.1 & 2 have spoken only on hearsay information. Hence, the same cannot receive any weightage at all from this Court. In the light of the evidences of P.Ws.1 & 3, the evidence as spoken by the accused as D.W.1 and the evidence of D.W.2 who is none other than the son of the accused, are nothing but a false and therefore, the same are liable to be rejected. The medical evidence also duly corroborates the eye witness account of P.Ws.1 & 3. The recovery of knife (M.O.2) with blood stains at the place of occurrence also further strengthens the case of the prosecution. Thus, the prosecution has clearly proved that it was this accused who caused the death of the deceased by stabbing the deceased indiscriminately.

15. Now, the question is "What is the offence that has been committed by the accused by the above act ? ". As we have already pointed out, the accused would have had no intention at all to kill the deceased. His intention was only to persuade the deceased and to take her back along with him, to continue the matrimonial life. Despite persuasion, the deceased was very

adamant and she refused to go along with the accused. She further told the accused that already she issued a legal notice to him in respect of the above matrimonial dispute and therefore, she is not willing to come with him. This quite naturally resulted in a quarrel between the accused and the deceased in which, the accused would have been provoked by the words and deeds of the deceased, having lost his control of mind, he had taken the knife and stabbed the deceased. Thus, the act of the accused would fall under the first exception to Section 300 I.P.C. Since, the act of the accused would fall under the third limb of Section 300 I.P.C., he is liable to be punished for offence under Section 304(i) I.P.C.

16. Now, turning to the quantum of punishment, the accused is a middle aged man, he has got no bad antecedents. He has got a family to take care off. After the occurrence also, it is not reported that he is involved in any other crime. Further, there are lot of chances for reformation. So far as the aggravating circumstances are concerned, there was no pre-meditation for the accused to cause the death of the deceased. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- would meet the ends of justice.

17. In the result, this Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant for the offence u/s 302 IPC is set aside and instead, he is convicted for offence under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks. It is directed that the period of detention already undergone shall be set off as required under Section 428 Cr.P.C. The trial Court is directed to secure the accused and commit him to prison to undergo remaining period of sentence, if any.

सत्यमेव जयते
-s/d-

Assistant Registrar

True Copy

WEB COPY
Sub-Assistant Registrar

To

1. The Sessions Judge (Mahalir Fast Track Court),
Erode.

2.The Public Prosecutor,
High Court, Madras.

3. The District Munsif cum Judicial Magistrate
Kodumudi
Erode District

4.The Chief Judicial Magistrate
Erode District (for information)

5.The Inspector of Police
Malayampalayam Police Station
Erode District

6 The Superintendent
Central Prison
Coimbatore

7.The Director General of Police,
Mylapore Chennai

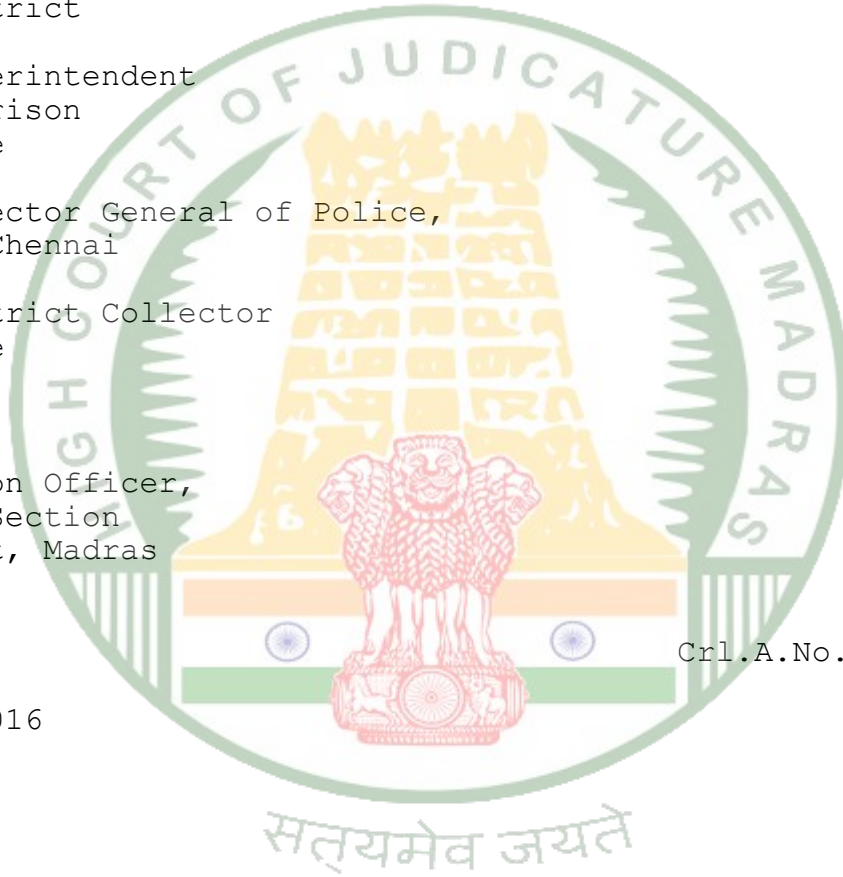
8.The District Collector
Coimbatore

Copy to :

The Section Officer,
Criminal Section
High Court, Madras

aa22/07/2016

Crl.A.No.400 of 2015



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