

BAIL SLIP

The Appellant/Accused namely Vetrivelan @ Sathiya, S/o.Vidhyapathy was directed to released on bail as per order of this Court dated 29.09.2015 and made in M.P.No.1 of 2015 in Cr1.A.No.522 of 2015 on the file of this Court.

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

Criminal Appeal No.522 of 2015

Vetrivelan @ Sathiya

.... Appellant

Vs

State by Inspector of Police,
B-1 Town Police Station,
Salem City
(Crime No.1792/2011)

.... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment of the learned II Additional Sessions Judge, Salem in S.C.No.87 of 2014 dated 04.03.2015.

For Appellant : Mr.J.Franklin

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 of 2014 on the file of the learned II Additional Sessions Judge, Salem. He stood charged for offences under Sections 294(b) (2 counts) 449, 352 & 302 I.P.C. The trial Court convicted the accused for offences under Sections 449 & 302 I.P.C., and acquitted him from rest of the charges. The trial Court sentenced the accused to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for six months for the offence under Section 449 I.P.C. and to undergo imprisonment for life and to pay a fine

of Rs.1,000/- in default to undergo simple imprisonment for six months for the offence under Section 302 I.P.C. The trial Court ordered to run the above sentences concurrently. 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:-

P.W.1, was running a Hair Dressing Shop under the name and style of "Kohinoor Saloon" at Door No.16-B, D.D.Road, Salem Town. The deceased Mr.Annachi @ Durairaj was working in the said saloon. 10 days prior to 08.10.2011, the accused visited the said shop, as a customer for hair cutting. The accused showed few photographs to the deceased and wanted him to cut his hair as per the style shown in one of the photographs. The deceased told that he did not have such a good skill to cut the hair, in such a fashion. On this, the accused got wild. He shouted at the accused as to how he could run such a shop without knowing the technique of stylish hair cutting. This is stated to be the motive for the occurrence. Again on 08.10.2011, the accused visited the same shop. He developed quarrel with the deceased and attacked him with hands and legs. The deceased unable to bear the attack, ran out of the shop, fell down and died.

3.On the complaint made by P.W.1, a case in Crime No.1792/2011 for offence under Section 302 I.P.C., was registered by P.W.11, the then Sub Inspector of Police on 08.10.2011 at 6.30 pm. Ex.P.1 is the complaint and Ex.P.10 is the F.I.R. He forwarded both the documents to Court which were received by the learned Judicial Magistrate at 10.00 pm on 08.10.2011.

4.P.W.11, the then Inspector of Police, B.1 Town Police Station, Salem City, took up the case for investigation. At 10.30 pm on 08.10.2011, he visited the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.3 and another witness. He examined few witnesses including P.Ws.1 & 2 and recorded their statements. Then he conducted inquest on the body of the deceased and forwarded the dead body for post mortem.

5.P.W.6 - Dr.Panneerselvam, conducted autopsy on the body of the deceased at 10.20 am on 09.10.2011 and he found the following injuries:-

"Injuries : Abrasions dark brown in colour
1) 2x1cms over back of right elbow
2) 1.2x1cms over dorsum of right wrist
3) 1x1cm over right forearm
4) Contusion over lateral wall of upper part of right abdomen M-5x4.5 cms

5) Contusion over front of lower part of right chest 2x1cms."

Ex.P.4 is the post mortem certificate. P.W.6 gave opinion that the death of the deceased was due to the effects of asphyxia due to compression of the neck.

6. On continuing investigation, P.W.13 arrested the accused at 11.00 am on 09.10.2011, in the presence of P.W.7 and another witness. On completing the investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 13 witnesses were examined and 18 documents were exhibited.

8. Out of the said witnesses, P.Ws.1 & 2 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.3 has stated that he saw the accused kicking the deceased on his chest once. P.W.4 has also stated so. P.W.5 has stated that she heard about the death of her husband namely the deceased. P.W.6 has spoken about the post mortem conducted and his final opinion regarding the cause of the death of the deceased. P.W.7 has spoken about the arrest of the accused. P.W.8 has stated that he handed over the F.I.R., to the learned Judicial Magistrate concerned at 10.00 pm on 08.10.2011. P.W.9 has spoken about the fact that he took the dead body to the Doctor for post mortem. P.W.10 has spoken about the fact that at 01.05 am on 09.10.2011, he examined the deceased when he was brought to the Government Hospital at Salem and declared him dead. P.W.11 has spoken about the registration of the case. P.W.12, the then Judicial Magistrate has stated that she recorded the statements from P.Ws.1, 3 & 4 and Mr. Murugesan under Section 164 Cr.P.C. P.W.13 has spoken about the investigation done and the final report filed in this case.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witnesses nor did he mark any documents on his side.

10. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

11.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.

12.As we have already pointed out, P.Ws.1 & 2, the so called eye witness to the occurrence have turned hostile and they have not supported the case of the prosecution in any manner. The prosecution relies only on the evidences of P.Ws.3 & 4. P.Ws.3 & 4 have stated that they saw the accused kicking the deceased on his chest once. They have not stated that the accused kicked the deceased on his neck. But, the medical evidence is to the effect that, the death of the deceased was due to compression of neck. It is not the case of the prosecution that the accused compressed the neck of the deceased. Thus, the medical evidence does not corroborate the evidence of P.Ws.3 & 4. Since, the evidence of P.Ws.3 & 4 are not corroborated by the medical evidence their evidences become doubtful. When that be so, in the absence of any corroboration from any other independent source, it is not safe to convict the accused upon the evidence of P.Ws.3 & 4. In such view of the matter, we find that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled for acquittal.

13.In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the accused/appellant by the learned II Additional Sessions Judge, Salem in S.C.No.87 of 2014, dated 04.03.2015, are set aside and the accused/appellant is acquitted. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the accused/appellant, shall stand discharged.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The II Additional Sessions Judge,
Salem.

2.Do- Through Prinicipal Sessions Judge,
Salem.

3.The Inspector of Police,
B-1, Town Police Station,

Salem City.

4.The Superintendent,
Central Prison,
Salem.

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

6.The District Collector,
Salem.

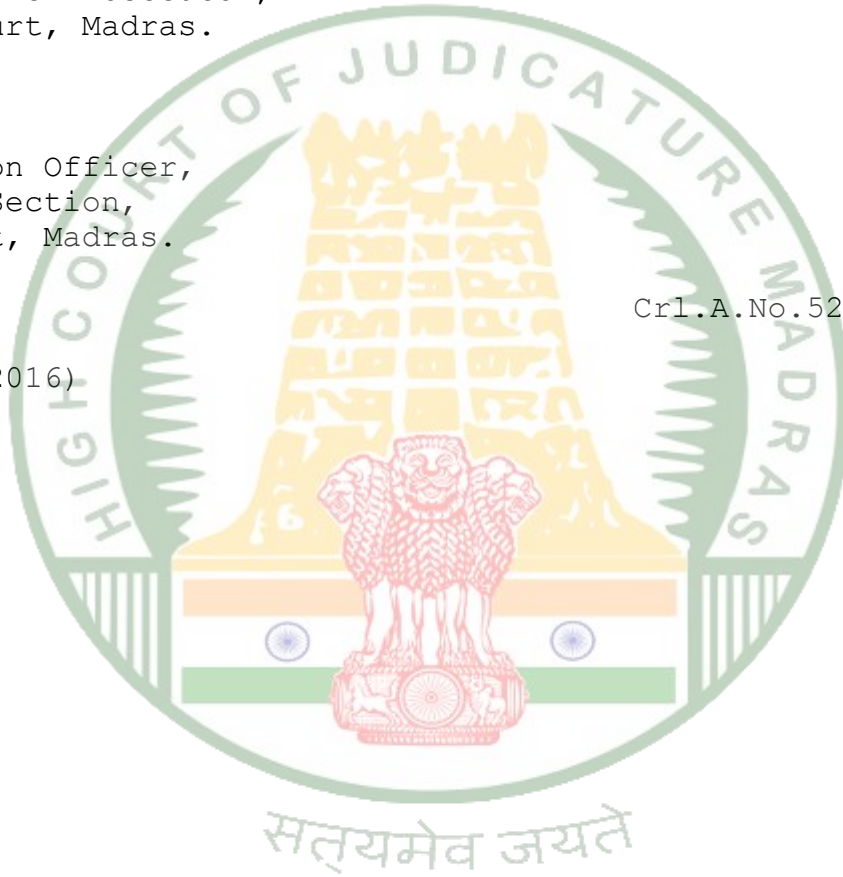
7.The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

RSY(CO)
CA(02/09/2016)

Cr1.A.No.522 of 2015



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