

BAIL SLIP

CRL.A.No.549 OF 2015

The Appellant/Accused namely A.Muralidharan S/o.Arasappan was directed to be released on bail as per order of this Court dated 01/09/2015 made in CrI.MP.No.1/2015 in CrI.A.No.549 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

CrI.A.No.549 of 2015

A.Muralidharan ... Appellant/Accused

Versus

State: Rep. by :
Inspector of Police,
V.1 Villivakkam Police Station,
Villivakkam,
Chennai - 600 049.
(Crime No.1851 of 2013) ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C to set aside the Judgment and Conviction passed by the learned VII Additional Sessions Judge, Chennai in S.C.No.248 of 2014 dated 27.07.2015 and acquit the appellant.

For Appellant : Mr.P.K.Ilavarasan

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

JUDGMENT

A2 in the Sessions case in S.C.No.248 of 2014 on the file of the learned VII Additional Sessions Judge, Chennai, is the appellant.

2. In this case, there are 3 accused. A1 and A3 are juveniles in conflict with law. The case against them has been sent to the Juvenile Justice Board, Chennai for enquiry. A2 is the appellant herein.

3. The appellant was tried for an offence under section 302 read with 34 of IPC. The Trial Court found him guilty but convicted him under section 323 read with 34 IPC and sentenced him to 6 months S.I. and fined him Rs.1000/- i/d one month S.I.

4. The case of the prosecution briefly runs as under :

[i] The appellant and the juveniles in conflict with law are friends. They belongs to Redhills Road in Villivakkam area. On 02.11.2013, at about 5 p.m., on intimation from the Kilpauk Medical College Hospital, P.W.1 Ravichandran, S.I., T.3 Korattur Police Station visited the said hospital seen one Sathish in an unconscious condition. The hospital staff informed him that Gopinath, Annadurai and Muralidharan (appellant) have admitted him and abandoned him. P.W.1 registered the F.I.R. in Crime No.1920 of 2011 under section 174 Cr.P.C. P.W.10 Dr.Sharmila Devi treated him [Ex.P.2 Accident Register Copy].

[ii] Later, Sathish died. Death intimation was given to police. As the occurrence took place within Villivakkam area, P.W.13, Nagalakshmi, S. I., Villivakkam Police Station, registered this case [F.I.R. Ex.P.4].

[iii] P.W.14, Arnold Easter, Inspector, Villivakkam Police Station, took up his investigation. He visited the scene place. Examined the witnesses and recorded their statement. Prepared Ex.P.6 Observation Mahazar in the presence of witnesses. Seized M.O.2 cell phone. Drew Ex.P.7 Rough Sketch of the scene place. In the presence of panchayatdars, he held inquest over the dead body of Sathish. (Ex.P.9 Inquest Report). He has arrested the accused. Recorded Ex.P.8 confessional statement of co-accused Annadurai. P.W.14 sent the dead body for postmortem.

[iv] P.W.12 Dr.Selvakumar conducted postmortem on the dead body of Sathish. He noticed abrasions on his cheeks, neck, ear, nose, fore arm and contusion on the back of his head. He opined that the deceased would have died of head injury. [Ex.P.3 Postmortem Certificate].

[v] P.W.14 altered the section of law to section 302 IPC. He arrested all the accused. A1 and A3, being juveniles in conflict to law, case as against them was separated and they were sent to Juvenile Justice Board, Kellys, Chennai.

[vi] Thereafter, P.W.15 Venkatesh Kumar, Inspector continued the investigation. After him, P.W.16 Gladson Jose, Inspector continued the investigation. Concluding his investigation, he filed the Final Report as against the appellant also for an offence under section 302 read with section 34 IPC.

5. After complying with the requirement under section 207 Cr.P.C., the learned Magistrate committed the case to the Court of Sessions, Chennai under section 209 Cr.P.C. On made over, the learned VII Additional Sessions Judge, Chennai, upon hearing both sides and on consideration of the case-records, framed a charge under section 302 read with 34 IPC as against the accused. The appellant pleaded not guilty to the charge.

6. Prosecution examined P.Ws.1 to P.W.16, marked Ex.P.1 to Ex.P.9 and exhibited M.Os.1 and 2.

7. When the appellant was examined on the incriminating aspects appearing in the prosecution evidence under section 313 Cr.P.C., the appellant denied the offence. No defence evidence.

8. Appreciating the said evidence and the arguments of both sides, the Trial Court found him guilty and recorded the conviction under section 323 read with 34 IPC and sentenced him as stated already.

9. According to the learned counsel for the appellant, appellant has been implicated in this case solely on the basis of the evidence of P.W.3. As per the prosecution version, the appellant had beaten Sathish on his legs with M.O.1 cricket bat and this has been witnessed by P.W.3. However, the medical evidence of P.W.12 revealed that there was no injury on the legs of the deceased. P.W.3 is also highly inimical towards the appellant and he had roped him in this case. Absolutely, there is no acceptable incriminating evidence as against the appellant. Offence under section 323 read with 34 IPC has not been established as against the appellant beyond all reasonable doubts.

10. On the other hand, the learned Additional Public Prosecutor would submit that P.W.3 has clearly spoken to about the occurrence. The presence of the appellant at the scene of crime at the time of occurrence has been established by the

evidence of P.W.3. In such circumstances, the appellant had shared the common intention, namely, killing of Sathish. In the circumstances, he need not have committed any overt act. Thus, the Trial Court has rightly found him guilty under section 323 read with 34 IPC and sentenced him accordingly.

11. I have anxiously considered the rival submissions, perused the Trial Court's judgment and the materials on record.

12. Now the question is whether an offence under section 323 read with 34 IPC has been established by the prosecution as against the appellant beyond all reasonable doubts.

13. Sathish suffered unnatural death. Three persons, which includes the appellant were said to have caused his death. The ocular witness P.W.3 Parthiban deposed that he has witnessed the occurrence and the appellant had beaten Sathish on his leg with M.O.1, cricket bat.

14. According to P.W.12, Dr.Selvakumar, who performed autopsy on the dead body of Sathish, there was no injury on the legs of the deceased. Whereas the specific evidence of eye witness P.W.3 is that he had seen the appellant assaulting Sathish on his legs with M.O.1, cricket bat. The evidence of P.W.3 has not been substantiated by the medical evidence. In his cross examination, P.W.3 admits that both their families are in inimical terms. In such circumstances, it is quiet hazardous and unsafe to act upon such a testimony of P.W.3 to visit the appellant with penal consequences. Thus an offence under section 323 read with 34 IPC as against the appellant has not been established by the prosecution beyond all reasonable doubts.

15. In fine, this criminal appeal is allowed. The conviction recorded and the sentence awarded under section 323 read with 34 IPC as against the appellant are set aside. The appellant is acquitted. Fine amount shall be refunded to him.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

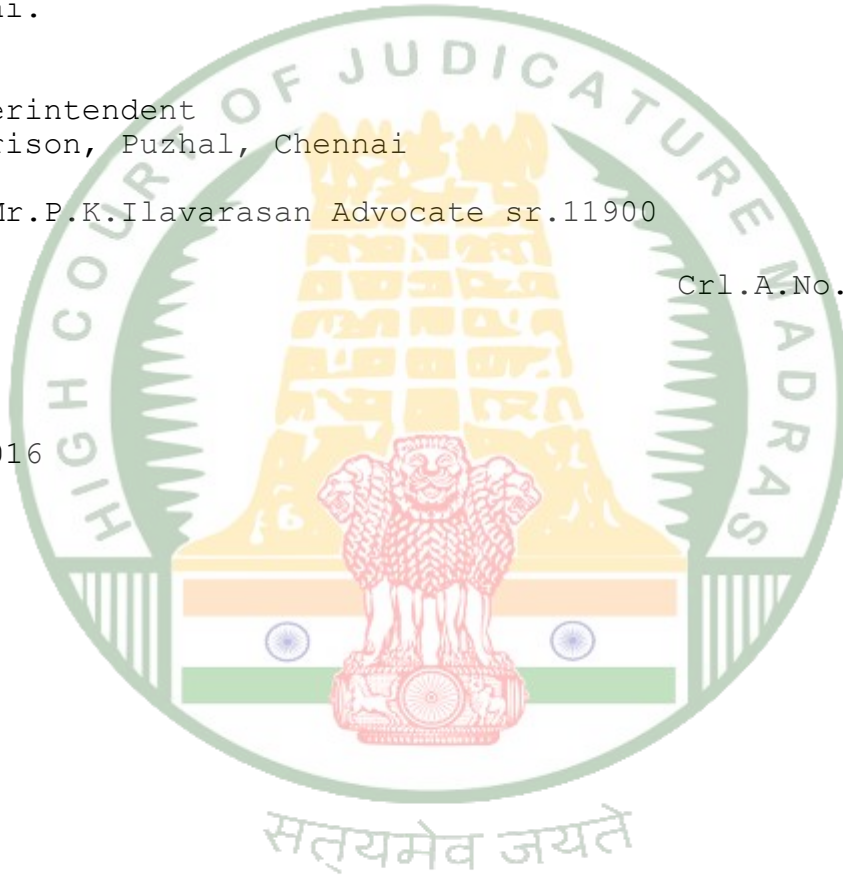
To

1. The VII Additional Sessions Judge,
City Civil Court,
Chennai
2. The Additional Public Prosecutor,
High Court,
Madras.
3. The Inspector of Police,
V1 Villivakkam Police Station,
Chennai.
4. The Superintendent
Central Prison, Puzhal, Chennai

+1 cc to Mr.P.K.Ilavarasan Advocate sr.11900

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