

BAIL SLIP

The Appellant/Accused namely Karthikeyan @ Karthick was ordered to be released on bail by order of this Court dated 22.10.2008 and made in Crl.M.P.No.1 of 2008 in Crl.A.No.355 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12-01-2016

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.355 of 2008

Karthikeyan @ Karthik

... Appellant/Single
Accused

Vs.

State by Inspector of Police
B-8 Police Station Coimbatore
Crime No.372 of 2007
Coimbatore District.

... Respondent/Complainant

Criminal Appeal under Section 374(2) of Cr.P.C., against the conviction under Section 304 IPC sentencing him to undergo 10 years RI with fine of Rs.1000/- in default to undergo 3 years Simple Imprisonment imposed in judgment dated 18-02-2008 made in S.C.No.187 of 2007 on the file of the Additional Sessions Court/Fast Track Court No.I, Coimbatore.

For appellant : Mr. S. Vinoth Kumar for
M/s. N. Manokaran & V.Anandhan

For respondent : Mr. P. Govindarajan,
Additional Public Prosecutor

JUDGMENT

The conviction and sentence dated 18-02-2008 passed in S.C.No.187 of 2007 by the I Additional District and Sessions Judge(Fast Track Court No.I) Coimbatore are being challenged in the present Criminal Appeal.

2. The specific case of the prosecution is that on 01-05-2007 at about 10:00p.m., due to tussle between the accused and deceased, the accused has attacked the deceased by using deadly weapon and thereby caused fatal injuries. After occurrence, the wife of the deceased by name Shanthi has given a complaint and the same has been registered in Crime No.372 of 2007.

3. On receipt of the complaint alleged to have been given by the defacto complainant, the Investigating Officer viz., P.W.16 has taken up investigation, examined connected witnesses and also made arrangements for conducting autopsy on the body of the deceased and accordingly, Dr. Edwin Joe (P.W.9) has conducted autopsy and he found the following external and internal injuries on the body of the deceased:

"Appearances found at Post mortem: Moderately nourished body of a male aged about 50 years, finger and toe nails were bluish in colour.

The following ante mortem injuries seen in the body:

- (1) A vertical stab wound seen in the right side abdomen 4x2 cms. The middle of the wound is 4 cms right of umbilicus. The wound passes obliquely backwards upward and to the left cutting the underlying ileum 1 x 1 cms entering into cavity, seen 78 cms above ileocaecal junction, the head of pancreas 3 x 1 x 1 cms and lower aspect of greater curvature of stomach 3.5 x 1 cms and has entered the stomach cavity. Then it has exited out through the posterior aspect of upper part of stomach 3 x 1 cms. The total length of the wound tract is about 15 cms. The upper end of the wound is blunt, lower end pointed. Margins of the wound are clean cut. Peritoneal cavity contains about 1500 ml of blood with clots soiled with intestinal and stomach contents. Stomach contains about 150gms of clotted blood and 200 gms of partly digested cooked rice particles with smell of alcohol.

OTHER FINDINGS:

- Pleural Cavities - empty
- Lungs - cut section pale
- Heart right side chambers contain few cc of fluid blood, left side chambers empty, Coronaries - patent
- Hyoid bone - intact
- Liver, Spleen, Kidneys & Brain - cut section pale
- Urinary bladder - empty

Opinion: The deceased would appear to have died of shock and haemorrhage due to stab injury abdomen sustained by him. The deceased has consumed ethyl alcohol prior to death."

The post-mortem certificate has been marked as Ex-P7. After completing investigation, P.W.17 has laid a final report on the file of the Judicial Magistrate, Court No.I, Coimbatore and the same has been taken on file in P.R.C.No.21 of 2007.

4. The Judicial Magistrate No.V, Coimbatore after considering the facts that the offences alleged to have been committed by the accused are triable by Sessions Court has committed the case to the Court of Sessions, Coimbatore Division and the same has been taken on file in S.C.No.187 of 2007 and subsequently, made over to the Trial Court.

5. The Trial Court after hearing arguments of both sides and upon perusing the relevant records has framed a charge against the accused under Section 302, IPC and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 16 have been examined and Exs-P1 to P17 and M.Os.1 to 9 have been marked.

7. When the accused has been questioned under Section 313, Cr.P.C., as respects the incriminating materials available in evidence against him in evidence, he denied his complicity in the crime.

8. On the side of the accused Ex-D1 has been filed.

9. The Trial Court after hearing arguments of both sides and upon perusing the available evidence on record has found the accused guilty under Section 304, IPC and sentenced him to undergo 10 years' R.I., and also imposed a fine of Rs.1000/- (Rupees One thousand only) with usual default clause. Against the conviction and sentence passed by the Trial Court, the present criminal appeal has been filed on the file of this Court at the instance of the accused as appellant.

10. The learned counsel for the appellant/accused has repeatedly contended that the wife of the deceased by name Shanthi has been examined as P.W.1 and during the course of cross-examination, she has candidly admitted to the effect that after reaching the place of occurrence, she enquired the persons who witnessed the occurrence and subsequently, taken her injured husband to Hospital through an Auto and therefore, she is not an eye-witness and further, P.Ws.3 and 4 have clearly admitted in their evidence during the course of cross-examination that initially the deceased has attacked the accused and thereby, the accused has sustained injuries and subsequently, the accused has attacked the deceased and therefore, only by exercising self-defence, the accused has attacked the deceased. Under the said circumstances, he cannot be mulcted with liability either under Section 304 or 302, IPC and further, the Investigating Officer viz., P.W.17 has clearly admitted to the effect that he has not conducted investigation with regard to the injuries sustained by the accused and the Trial Court without considering the nature of evidence adduced by P.Ws.3,4 and 17 and also without considering the explanation given by the accused, has erroneously invited the conviction and sentence under Section 304, Cr.P.C., against the accused and therefore, the same is liable to be set aside.

11. Per contra, the learned Additional Public Prosecutor has contended that in the instant case on the side of the prosecution, P.W.1, wife of the deceased has deposed evidence to the effect that she has witnessed the occurrence and apart from P.W.1, P.Ws.3 to 5 have been examined as eyewitnesses and they have been initially examined in Chief on 10-12-2007 and subsequently, after making certain arrangements they have been recalled and cross-examined on 18-12-2007. Under the said circumstances, the evidence given by P.Ws.3 and 4 in cross-examination in favour of the accused cannot be accepted and further, on the side of the prosecution, enormous evidence is

available for the purpose of proving the charge framed against the accused and the Trial Court after considering the overwhelming evidence available on record has invited the conviction and sentence and therefore, the conviction and sentence passed against the accused are not liable to be set aside.

12. On the basis of divergent submissions made on either side, the Court has to look into as to whether the prosecution has established the genesis of its case under Section 304, IPC.

13. The entire case of the prosecution hinges upon Ex-P1 complaint wherein it has been specifically stated about the overt acts alleged to have been done by the accused on the person of the deceased. The author of Ex-P1 has been examined as P.W.1 and during the course of chief-examination, she stated that her husband has been attacked by using a knife. But, during the course of cross-examination, she has clearly admitted to the effect that after reaching the place of occurrence, she has enquired as to what has happened and after knowing the details of occurrence, she has taken her husband to Hospital through an Auto. Therefore, it goes without saying that P.W.1 is not at all an eye-witness. Apart from P.W.1 on the side of the prosecution, P.Ws.3 to 5 have been examined. In fact, as rightly pointed out by the prosecution that P.Ws.3 to 5 have been examined on 10-12-2007 and subsequently, they have been recalled and cross-examined on 18-12-2007. During the course of cross-examination, P.Ws.3 to 5 have stated that initially in the drunken mood, the deceased attacked the accused and thereby caused injury to the accused.

14. At this juncture, the Court has to look into the statements given by P.Ws.3 to 5 under Section 161(3), Cr.P.C., wherein no such factual aspects have been mentioned by them. Since P.Ws.3 to 5 have not stated anything with regard to such aspects in their statements recorded under Section 161(3), Cr.P.C., and since after lapse of eight days from the date of Chief-examination, they have been cross-examined on 18-12-2007, the evidence given by them in cross-examination need not be looked into and the same can be eschewed. It has already been pointed out that during the course of chief examination, P.Ws.3 to 5 have clinchingly stated to the effect that in the place of occurrence, the accused has attacked on the person of the deceased. Considering the evidence given by P.Ws.3 to

5, the Court can very well come to a conclusion that such occurrence has taken place as spoken to by the prosecution.

15. It is an admitted fact that P.W.9, Doctor Edwin Joe has conducted autopsy on the body of the deceased and his opinion is that the deceased would have died due to injuries sustained by him.

16. Considering the oral evidence adduced by P.Ws.3 to 5 coupled with medical evidence, the Court can easily come to a conclusion that only due to overt acts alleged to have been committed by the accused, the deceased has passed away.

17. It is true that to the questions posed under Section 313, Cr.P.C., the accused has given an explanation to the effect that initially, the deceased has attacked him by using a knife and thereby, he sustained injuries and subsequently, by using the very same knife, he attacked the deceased. In fact, the Investigating Officer viz., P.W.17 has not conducted any investigation with regard to the said aspect. If really, the accused has sustained such kind of injury on his person, definitely, some document would have become emerged. But, nothing has been filed on the side of the accused. Therefore, viewing from any angle, the contentions put forth on the side of the appellant /accused cannot be accepted.

18. The learned counsel appearing for the appellant/accused has also contended that the accused is a first offender and attained only 29 years' of age, at the time of occurrence and therefore, some leniency may be shown in awarding sentence.

19. Considering that the accused is a first offender and also a close relative of the deceased and the entire occurrence has taken place on the spur of moment, this Court is of the view to give leniency in awarding sentence and to that effect, the present Criminal Appeal is liable to be allowed in part.

In fine, this Criminal Appeal is allowed in part. The conviction passed by the Trial Court in Sessions Case No.187 of 2007 dated 18-02-2008 is confirmed. However, the quantum of sentence imposed against the appellant/accused by the Trial Court is modified as follows:

The appellant/accused is sentenced to undergo five years' R.I., instead of 10 years. No modification in respect of fine amount. If the appellant/accused is not in duress, the Trial Court is directed to take appropriate steps to immure him in prison to serve out the remaining period of sentence.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

glp

To

1.The Additional Sessions Court/
Fast Track Court No.I,
Coimbatore.

2.Inspector of Police
B-8 Police Station Coimbatore
Crime No.372 f 2007
Coimbatore District

3.The Public Prosecutor,
High Court, Madras 104.

4.The Judicial Magistrate No.V,
Coimbatore.

5.The Superintendent,
Central Prison,
Coimbatore.

6.The Chief Judicial Magistrate,
Coimbatore.

+1cc to M/s.N.Manokaran, Advocate, S.R.No.2382 (19.05.2016)

Criminal Appeal No.355 of 2008

SV(CO)
CA(25/01/2016)