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BAIL SLIP

The Appellant/Accused namely J.Annamalai S/o.Jayaraman, was released on bail vide order dated 5.6.2012 made in CrI.MP.No.1/2012 in CrI.A.No.50/12.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 09.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

CrI.A.No.50 of 2012

J.Annamalai ... Appellant/Accused

vs.

State, rep.by

The Inspector of Police,

Sivakanchi (B1) Police Station

(Crime No.288 of 2009)

... Respondent/Complainant

Criminal appeal preferred under Section 374 Cr.P.C., against the judgement dated 04.01.2012 passed by the District and Sessions Court No.II, Kanchipuram, in S.C.No.81 of 2010.

For Appellant : No appearance

For Respondent : Mr.M.Maharaja, Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by M.JAICHANDREN, J.)

The appellant is the sole accused in Sessions Case No.81 of 2010, on the file of the District and Sessions Judge No.II, Kanchipuram. He stood charged for the offence under Sections 302 and 309 of the Indian Penal Code, 1908. By the judgement, dated 04.01.2012, the trial Court had convicted him under Section 302 of the Indian Penal Code, and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, and in default, to undergo six months rigorous imprisonment and had acquitted him from the charge under Section 309 of the Indian Penal Code. Challenging the said conviction and sentence imposed on the appellant, he is before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows:

(a) The deceased in this case was one Bhuvaneswari. The accused is her husband. There were frequent quarrels between the



accused and the deceased. They had two children, by name, Madhusudhanan and Adithya. Due to a quarrel, the deceased had returned to her parental home, along with her children. Thereafter, the issue had been resolved, by means of mediation, and from 30.04.2009 the deceased and the accused were living, together, at No.36-B, Ulagalandhar Madaveedhi, Kanchipuram, in the house of P.W.1. While so, at 2.00 p.m., on 2.8.2009, pursuant to a quarrel between the accused and the deceased, the accused cut the deceased with 'Aruvalmanai' and had also hit her with a gas cylinder, killing her on the spot.

(b) P.W.1, the landlord, who was residing in the ground floor of the house, had gone upstairs and had found the deceased

dead. The accused was fleeing away from the scene of occurrence. On the complaint made by P.W.1, P.W.12, the Inspector of Police, Sivakanchi Police Station, had registered a case, in Crime No.488 of 2009, under Section 302 of the Indian Penal Code, at 3.00 p.m. on 2.8.2009. Ex.P.1 is the complaint and Ex.P.13 is the First Information Report. Thereafter, he had forwarded both the documents to the Court and had taken up the case for investigation. He had prepared an observation mahazar (Ex.P.14) and the rough sketch (Ex.P.15), at the place of occurrence, in the presence of witnesses and then he had forwarded the dead body of the deceased for postmortem. P.W.9, Dr.Surendra Mohan, had conducted autopsy on the body of the deceased, at 11.00 a.m., on 3.08.2009. He had found the following injuries on the body of the deceased:

- "(1) Nasal bone fracture was present.
- (2) Right temporal bone fracture
- (3) Right ulna fracture
- (4) Right forearm laceration was present
- (5) Right parietal bone fracture extending to the (R) occipital bone
- (6) Right clavicular fracture present"

Ex.P.9 is the postmortem certificate. P.W.9, the doctor, who had conducted the postmortem, had given the opinion that the deceased would appear to have died of neurogenic shock, due to head injury. P.W.12 had recovered the blood stained earth and sample earth from the place of occurrence.

(c) Later it turned out that in an attempt to commit suicide the accused had caused an injury on his left forehead and also to his testis with the same 'aruvamanai' and with those injuries, he had fled away from the scene of occurrence. With the help of one Ayyappan, the accused had gone to the Government Hospital at Kanchipuram, on 2.8.2009, at 3.20 p.m. P.W.10, Dr.Selvam had examined him. The accused told him that he had caused the injuries to himself due to quarrel with his wife. P.W.10, found the following injuries:

- 1) Contusion on both forehead;
- 2) Cut injury of both scrota.



According to P.W.10, the Inspector of Police (P.W.12), had recorded the statement of the accused in which P.W.10 had subscribed the signature of the accused. It is the further case of the prosecution that, on 29.8.2009, at 4.35 p.m. the accused was found at Tirukachi Nambi Street.

(d) P.W.13 had arrested the accused in the presence of P.W.8 and another witness. The accused did not make any disclosure statement. Then, he had forwarded the accused to the Court, for judicial remand, and handed over the material objects to the Court. On his request, the material objects were sent for chemical examination, which reveals that there was human blood on all the material objects. On completion of the investigation, he had laid the charge-sheet against the accused.

3. Based on the above materials, the trial Court had framed the charges, as detailed in the first paragraph of this judgement, which the accused had denied. In order to prove the case, on the side of the prosecution, 13 witnesses were examined, 22 documents and 11 material objects were marked.

4. P.W.1 had turned hostile and he had not supported the case of the prosecution, in any manner. P.Ws.2 and 3 have also turned hostile and they have not supported the case of the prosecution in any manner. P.W.4, who is the brother of the deceased, has spoken only about the frequent quarrels between the accused and the deceased. P.Ws.6, 7 and 8 have turned hostile and they have not supported the case of the prosecution. P.W.9 has spoken about the postmortem conducted on the dead body of the deceased and the final opinion regarding the cause of the death. P.W.10 has deposed that, on 2.8.2009, at about 3.20 p.m., the accused was brought to the hospital for treatment. He had injuries on the male genitalia. Ex.P11 is the accident register. P.W.12 has spoken about the registration of the case and the investigation done by him. P.W.13 has spoken about the further investigation done and the final report submitted by him.

5. On the above incriminating materials, when the accused was questioned under Section 313 of the Code of Criminal Procedure, 1973, in respect of some of the incriminating materials against him, he had denied the allegations made against him and had stated that the charge framed against him was incorrect. However, he did not choose to examine any witness, nor has he marked any document in his favour.

6. Having considered the above, the trial Court had convicted the accused, as detailed in the first paragraph of its judgement, dated 4.1.2012. Aggrieved by the same, the appellant/accused is before this Court, with this appeal.

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



8. In the present case, there is no eyewitness account of the alleged occurrence nor is there any circumstantial evidence to prove the guilt of the accused. All the vital witnesses, as we have already pointed out, have turned hostile and they have not supported the case of the prosecution, in any manner. There is no evidence to show that the accused was, at least, lastly seen in the house, along with the deceased, where the deceased was found dead. As such, this is a case where there is no incriminating evidence against the accused pointing to his guilt. Surprisingly, the trial Court has found him guilty, based on surmise, which in our considered view, is perverse in nature. The conviction and sentence imposed on the appellant is, therefore, liable to be set aside and he is entitled to be acquitted.

9. In the result, this criminal appeal is allowed and the conviction and sentence imposed on the appellant/accused are set aside. The appellant/accused is acquitted. The bail bond, if any, executed, by him shall stand cancelled. The fine amount, if any, paid by him shall be refunded to him, forthwith.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1. The District and Sessions Court No.II,
Kanchipuram.

2.The Inspector of Police,
Sivakanchi (B1) Police Station

3.The Public Prosecutor,
High Court, Madras

4.The Superintendent,
Central Prison, Vellore.

rsi(co)
krd 20/7

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