

BAIL SLIP

The Appellant, Viz M/s.Madhammal Wife of Rajendran, aged about 37 years, was directed to be released on bail as per order of this Court dated 12.03.2013 in CrI.MP.No.1 of 2013 in CrI.A.No.542/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-03-2016

CORAM

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

Criminal Appeal No.542 of 2012

Madhammal ... Appellant/Accused

Versus

State rep. by
Inspector of Police,
Perumanallur Police Station,
Tiruppur District. ... Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment of conviction and sentence imposed by Additional District and Sessions Judge, Fast Track Court No.5, Tiruppur in S.C.No.189 of 2011, by its judgment, dated 17.11.2011.

For Appellant : Mr.M.Selvam
For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

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JUDGMENT

This Criminal Appeal has been filed against the conviction and sentence passed by the Additional District and Sessions Court, Fast Track Court V, Tiruppur, in S.C.No.189 of 2011, by its judgment, dated 17.11.2011, convicting the appellant for the offence under Section 302 of the Indian Penal Code, 1860, and sentencing her to undergo the punishment of life imprisonment.

2. The brief facts of the case necessary for the disposal of the above Criminal Appeal are as follows:

2.1) The accused Madammal is the wife of the deceased Rajendran. They had three daughters and one son. Both the accused and the deceased had been working as construction workers. The deceased Rajendran is a drunkard. He used to come home drunk and beat up his wife Madammal, the accused herein. While so, on 11.9.2010, at about 4 p.m., the deceased Rajendran had attempted to assault the accused Madammal with a grinder stone. He had also abused her by stating that her character was in question. At about 5.00 p.m., while the deceased was in his house, at Door No.8/920, Mummurthy Nagar, the accused had beaten the deceased with a wooden log on his hands and legs and she had pushed him down on the floor, resulting in his death. Therefore, the accused Madammal had been charged for having committed the offence of murder, under Section 302 of the Indian Penal Code, 1860.

3) In order to prove the charges, on the side of the prosecution, 11 witnesses had been examined. 11 documents and one material object had been marked.

4. It is the evidence of P.W.1 to P.W.4 that the deceased Rajendran and the accused Madammal, were living together in one of the three houses belonging to P.W.1, as tenants. P.W.1 is the landlord of the house in which the deceased and the accused were living together as tenants. He has stated that the accused and the deceased used to quarrel frequently. He has further stated that on 12.9.2010 at about 11.00 a.m. he came to know that the deceased was lying dead in his house. Then he went to the police station and made a complaint at 12.00 noon on 12.9.2010, upon which the present case was registered for an offence under Section 302 I.P.C. The complaint and the F.I.R. had reached the court at 7.40 p.m on 12.9.2010.

5. P.W.2 had turned hostile and he has not supported the case of the prosecution in any manner. P.W.3 has stated that on 12.9.2010 at about 10.00 a.m, the accused spoke to her over phone and wanted her to see whether her husband was sleeping in the house. He went to the house of the deceased and at that time the deceased was lying dead. This witness has not stated anything incriminating against the accused. P.W.4 has stated that on 11.9.2010 at 9.00 p.m, the accused came to her house and got the cell phone number and left. On the next day morning by 10.00 a.m, she spoke to her and wanted to know whether her husband was still sleeping. On the request made by P.W.4, her husband P.W.3 went to the house of the deceased and at that time

he found the deceased dead. P.W.5 has spoken about the seizure mahazar and the rough sketch. P.W.6 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.7 has stated that on the arrest of the accused, she gave a voluntary confession, based on which a wooden log was recovered. P.W.8 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.9 has stated that he took the dead body to the hospital and handed over the same to the Doctor for conducting postmortem. P.W.10 has spoken about the registration of the case and P.W.11 about the investigation done.

6. When the above incriminating materials were put to the accused, under Section 313 Cr.P.C, she had denied the same as false. 8) On behalf of the accused, it had been pleaded that the accused, who is the wife of the deceased had nothing to do with the death of her husband, namely, Rajendran. The deceased had visited a liquor shop near the place of occurrence and after taking liquor he had quarreled with some of the people at the said place and that they had beaten him. Thereafter, the deceased had gone back to his house in a weakened condition, after having sustained some injuries due to the fight that had taken place near the liquor shop. After having reached his house he had orally abused his wife, the accused herein, and he had lied down. As the deceased was in a drunken state the accused did not want to aggravate the situation by quarreling with him. Therefore, she had left to her mother's house. The next day, when he was in her mother's house, she had received information about the death of her husband. She had also learnt that P.W.1 had given a complaint to the police about the death of her husband. As such, the accused is an innocent person and that she has nothing to do with the death of her husband Rajendran. However, she did not choose to examine any witness on her side, nor marked any documents.

7. Having considered all the above, the trial Court had convicted her under Section 302 I.P.C. and had accordingly, imposed the sentence on her. Challenging the said conviction and sentence the accused is now before this Court, with this appeal.

8. We have heard the learned counsels appearing on behalf of the appellant/accused and the learned Additional Public Prosecutor appearing for the State. We have also perused the records available before this court, carefully.

9. There is no eye witness to the occurrence, which is said to have taken place on 11.9.2010. The prosecution solely relies on the circumstances leading to the death of the deceased. However, the prosecution has not been able to prove the allegation leveled against the accused that she had committed

the offence of murder of her husband, namely, Rajendran. The prosecution had examined P.W.1, who is a neighbor of the deceased, who had stated that, on 11.9.2010, he had gone to the house of the deceased, having heard about the occurrence. He had found the dead body of the deceased lying in his house. Thereafter, he had gone to Perumanallur Police station and had lodged a complaint, which had been marked as Ex.P-1. From the said complaint, it could be noted that he has not stated anything incriminating against the accused.

10. P.W.2, who is living in one of the houses situated close to the house of the deceased, had turned hostile. He has not stated anything in his evidence in favour of the prosecution. One Chandrasekar a neighbor of the deceased, who had been examined by the prosecution, as P.W.3 had stated that, on hearing about the occurrence, he had gone to the place of occurrence and had found the dead body of the deceased. However, he had not stated anything incriminating against the accused.

11. P.W.4, who is also a neighbor of the deceased had stated that, at about 9.00 a.m., on 11.9.2010, the accused had come to her house and had wanted her cell phone number. Thereafter, all of them had gone to the house of the deceased and had found the dead body of the deceased in the house. P.W.5 is the witness to the observation mahazar. P.W.6, the father of the deceased, who had been examined by the prosecution, had turned hostile and he had not supported the case of the prosecution, in any manner.

12. P.W.7, the Village Administrative Officer, Tiruppur, had spoken about the confessions said to have been made by the accused to the police, based on which a wooden log had been recovered. It had been marked as M.O.1. Except the recovery of the wooden log, made by the police, based on the confession statement made by the accused, there is no other evidence to prove the charge that the accused had caused the injuries said to have been sustained by the accused leading to his death. Even though it could be noted from the postmortem certificate, marked as Ex.P-7, that the deceased had died of head injury, resulting in shock and hemorrhage, there is no incriminating evidence connecting the wooden log with the alleged crime, said to have been committed by the accused.

13. Even the last seen theory projected by the prosecution would fail to prove the guilt of the accused, as she had gone to her mother's house, on 11.9.2010. The mother of the deceased,

who is said to have been with the deceased, till the date of the occurrence, had not been examined as a witness, by the prosecution. In such circumstances, we do not find any evidence to substantiate the case of the prosecution that the appellant/accused had caused the injuries said to have been sustained by the deceased leading to his death. Therefore, the charge leveled against the accused, under Section 302 of the Indian Penal code, has not been proved, by the prosecution, beyond reasonable doubt. In such circumstances, we are compelled to set aside the conviction and sentence imposed on the appellant/accused, by the Additional District and Sessions Court, Fast Track Court V, Tiruppur, in S.C.No.189 of 2011, by its judgment, dated 17.11.2011.

14. In the result, this criminal appeal is allowed. The conviction and sentence imposed on the appellant by the trial Court, by its judgment, dated 17.11.2011, are set aside and she is acquitted of the charge. The bail bond, if any, executed by her, shall stand cancelled and the fine amount, if any, paid by her, shall be repaid to her.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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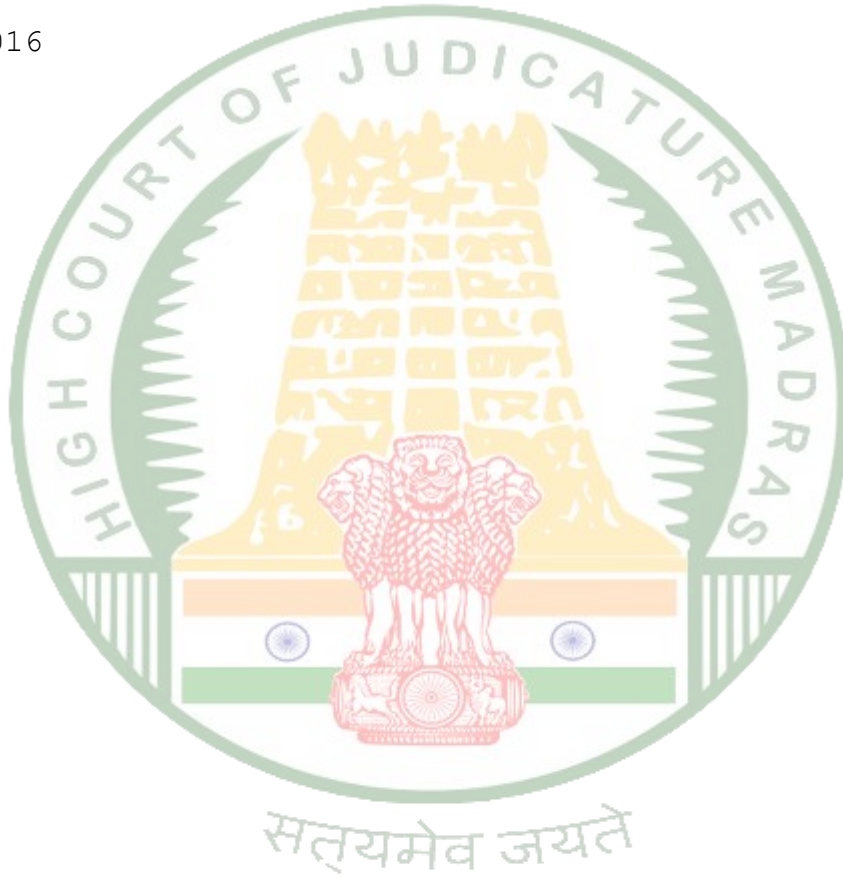
1. The Additional District and Sessions Judge,
Fast Track Court No.5, Tiruppur.
2. The Public Prosecutor,
Madras High Court.
3. -do-Thro The Principal District Judge,
Tiruppur
4. The Judicial Magistrate No.I, Tiruppur
5. The Chief Judicial Magistrate, Tiruppur
6. The Director General of Police,
Chennai
7. The Superintendent Central Prison,
Vellore

8.The Inspector of Police,
Perumanallur, Police Station
Tiruppur

+1 cc to M/s.T.Pappaiah Dharmarajan Advocate sr.14617

Criminal Appeal No.542 of 2012

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