

BAIL SLIP

The Appellant/Accused namely Sagayaraj, S/o.Thomas, was granted bail on 17.06.2016 in and by the order of this Court in M.P.No.4890 of 2016 in Crl.A.No.303 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.303 of 2016

Sagayaraj ... Appellant/Sole Accused

Vs

State by

The Inspector of Police,

B.9, Saravanampatty Police Station,

Coimbatore City.

... Respondent/Complainant

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned I Additional District and Sessions Judge (Sessions Judge for Bomb Blast Cases), Coimbatore, made in S.C.No.61/2011 dated 21.01.2013.

For Appellant : Mr.V.Bhiman

For Respondent : Mr.V.M.R.Rajentran

Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.61/2011 on the file of the learned I Additional District and Sessions Judge (Sessions Judge for Bomb Blast Cases), Coimbatore. He stood charged for offences under Sections 449 and 302 of IPC. By judgment dated 21.01.2013, the trial court convicted him under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for 6 months for the offence under Section 302 of IPC and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for 3 months for the offence under Section 449 of IPC. The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant/sole accused is before this Court with this Criminal Appeal.

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

(a) The deceased in this case was one Mr.Rajan. He was residing in a rented house at Anjugam Nagar in Chinnavedampatty in Coimbatore District. He was running a shop. The deceased was staying alone at his house. The accused also hails from the same village. His wife is one Mrs.Sabitha. Sabitha used to visit the house of the deceased to cook for him. In that process, she used to stay at the house of the deceased for hours together. This gave rise to a talk in the village that the deceased and the wife of the accused had illicit intimacy. This came to the knowledge of the accused. He was enraged over the same. Few days prior to 24.10.2010, near the bus stop in the said village, around 05.00 to 05.30 p.m., there was a wordy quarrel between the accused and the deceased on account of the illicit intimacy between the deceased and the wife of the accused. P.W.1 the then Local Municipal Councilor of 15th Ward, Coimbatore and a leading Politician and others intervened and separated them. This is stated to be the motive for the occurrence.

(b) On 24.10.2010 around 03.00 p.m., it is alleged that the accused, entered into the house of the deceased. The wife of the accused was present in the house of the deceased along with her child. On seeing the same, the accused got wild. He pushed the deceased down inside the house of the deceased and dashed the head of the deceased against the floor. The deceased raised alarm. The wife of the accused rushed out of the house crying. On seeing the alarm raised, P.W.1 and others rushed to the house of the deceased and they witnessed the occurrence. On seeing them, the accused ran away from the scene of occurrence.

(c) P.W.1 and others immediately took the deceased to the hospital and admitted him as inpatient. Then, P.W.1 went to Saravanampatty Police Station and made a complaint at 04.15 p.m. on 24.10.2010. Ex.P.1 is the complaint and Ex.P.12 is the First Information Report. P.W.15, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.1100 of 2010 under Section 307 of IPC against the accused. He forwarded both the documents to court which were received by the learned Magistrate at 06.30 p.m. on 24.10.2010.

(d) P.W.16, the then Inspector of Police, took up the case for investigation. He rushed to the hospital immediately. But he could not examine the deceased as he was unconscious. Then, he went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch at the place of occurrence in the presence of P.W.4 and another witness. He recovered the blood stained earth and sample earth from the place of occurrence. He examined P.Ws.1 to 3 and few more witnesses. On 25.10.2010, he arrested the accused in the presence of P.W.6 and another

witness. On such arrest, he made a voluntary confession in which he disclosed the place where he had hidden a blood stained Lungi. In pursuance of the same, he took the police and the witnesses to his house and produced M.O.9 Lungi. P.W.16 recovered the same under a Mahazar in the presence of the same witnesses. Then, he forwarded the accused for judicial remand. On 27.10.2010 at 08.15 a.m., the deceased succumbed to the injuries in the hospital. On receiving intimation from the hospital, he altered the case into one under Section 302 of IPC and submitted an Alteration Report. Then, he conducted inquest on the dead body of the deceased and forwarded the same for postmortem.

(e) P.W.12, an Associate Professor at Coimbatore Government Medical College Hospital conducted autopsy on the dead body of the deceased on 27.10.2010 at 12.30 p.m. He found the following injuries:

'Moderately nourished body of a male aged about 36 years. Finger and toenails bluish in colour.

The following ante mortem injuries noted over the body:

1) Transversely oblique laceration 2x0.5 cm x skin deep noted over medial aspect left eyebrow, the lower end is starting from the left eye brow.

2) Bluish colour contusion 5x2cm x entire thickness noted over inner aspect of lower lip with laceration 2x0.5x1 cm noter over left lower lip.

3) Bluish colour contusion noter over inner aspect of entire upper lip.

4) Multiple linear abrasions with reddish brown scab noted over left side upper cheek and right side upper cheek (nail mark)

5) Transversely oblique abrasion with reddish brown scab 5x0.75 cm noted over left side lower neck, 2 cm above to left side clavicle.

6) Abrasion with reddish brown scab and surrounding contusion over the area of 6x6cm noter over mid occipital region.

7) Abrasion with reddish brown scab 2x0.5cm noted in lateral aspect of left eyebrow.

On dissection of Thorax and Abdomen: Bluish contusion 6x3cm acted over 6th inter coastal muscles of right side chest. Right side 5th and 6th ribs found fractured in its mid clavicular line with surrounding tissue contusion.

On dissection of Scalp, Skull and Lura: Sub scalpel contusion 10x6cm noted over mid and right occipital region. Diffuse sub dural and sub arachnoid hemorrhages noted over both cerebral hemisphere. Sub dural clot weighing about 50 grams noter over right side

hemisphere and 5 grams noted over left frontal region. Cerebral spinal fluid increased in volume with blood stain. Petichial hemorrhages noted on intra cerebral region of both frontal lobes of brain.

On dissection of Neck: Contusion 4x3x1 cm noted on lower aspect of right side neck muscle below to thyroid cartilage level. Contusion 6x3x1 cm noted over lateral aspect of left side lower neck muscles. Hyoid bone intact. Fracture noted over lower end of superior cornu of thyroid and usage with surrounding tissue contusion. On dissection of Larynx and Trachea: Both pyriform fossa and aryepiglottis found contused.

OTHER FINDINGS:-

- Peritoneal and pleural cavities - empty
- Heart: Right side chambers contain about few cc of fluid blood, left side chamber empty. Coronaries patent.
- Stomach contains about 200grams of partially digested food particles, no specific smell mucosa congested.
- Small intestine: contains about 10ml of bile stained third, no specific smell, mucosa congested.
- Liver, Spleen, Brain, Lungs and Kidneys: cut section congested.
- Urinary bladder empty.''

Ex.P.9 is the Postmortem Certificate and Ex.P.10 is his final opinion regarding cause of death. He gave opinion that the injuries found on the body of the deceased would have been caused by dashing him against the floor. He further opined that the death of the deceased was due to shock and hemorrhage due to the said injuries.

(f) P.W.16 collected the medical records, examined the Doctors and recorded their statements. At his request, the material objects were sent for chemical examination. The report revealed that there were human blood stains found on all the material objects. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined and 18 documents and 9 material objects were also marked.

4. Out of the said witnesses, P.W.1 has stated that on hearing the alarm raised by the wife of the accused and the deceased, she rushed to the house of the deceased. She found the deceased lying and the accused sitting on him and dashing

his head against the floor. P.W.2 yet another neighbour has stated that the accused came to his shop for purchasing cigarette and then, he went into the house of the deceased. Within 5 minutes, he heard the alarm raised from the house of the deceased. When he rushed to the house of the deceased, he found blood stains on the house and on seeing the same, he fainted. He has been treated as hospital as he has not stated anything about the occurrence though he was expected to speak about the entire occurrence. P.W.3 yet another neighbour has spoken about the entire occurrence. P.W.4 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. P.W.5 Photographer has spoken about the photographs taken by him at the place of occurrence as directed by P.W.16. P.W.6 has spoken about the earlier occurrence in which the accused reprimanded the deceased not to have any connection with his wife. He has also spoken about the arrest of the accused and the consequential recovery of the material objects including the Lungi on the disclosure statement made by the accused. P.W.7 has stated that he took the deceased to the hospital in a Call Taxi. P.W.8 has also spoken about the same facts as spoken by P.W.7. P.W.9 is the wife of the deceased. She has stated that she went to the hospital to see her husband after hearing about the occurrence.

5. P.W.11 Doctor Karuppusamy has stated that on 24.10.2010 at 04.15 p.m., when he was in the Government Medical College Hospital, Coimbatore, the deceased was brought for treatment by one Thiagarajan. He was unconscious. He admitted him as inpatient. Thiagarajan told the Doctor that the deceased was attacked by an unknown person. P.W.10 Doctor Angeline Vincent has stated that the deceased was unconscious throughout at the time of admission in the hospital and died on 27.10.2010 at 08.15 a.m. P.W.12 has spoken about the postmortem conducted and his final opinion regarding cause of death. P.W.13 has spoken about the chemical analysis conducted and the recovery of the blood stained earth and sample earth and the Lungi from the accused. He found that there were human blood stains found on the same. P.W.14 a Head Constable has stated that he handed over the dead body of the deceased for postmortem as directed by P.W.16. P.W.15 has spoken about the registration of the case and P.W.16 has spoken about the investigation done and the final report filed by him.

6. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness nor to mark any document on his side. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging

the said conviction and sentence, the appellant is before this Court.

7. We have also heard the learned Counsel for the Appellant, the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. The learned Counsel for the appellant would submit that the evidences of P.Ws.1 and 3, who have spoken about the occurrence, cannot be believed because at the earliest point of time, when the deceased was taken to the Doctor by one Thiagarajan, it was informed to the Doctor that the deceased was attacked by an unknown person. This argument of the learned Counsel for the appellant does not persuade us at all. It is not as if the houses of P.Ws.1 and 3 are situated at a far off place. After all, they are neighbours of the deceased. They have got no axe to grind against the accused. They have vividly spoken about the motive and the occurrence that took place before the present occurrence. They have stated that on hearing the alarm raised, when they reached the house of the deceased, they found the wife of the accused rushing out from the house of the deceased. When they went inside the house, they found the deceased lying and the accused sitting on him and dashing his head against the floor. Though these two witnesses, namely, P.Ws.1 and 3, have been cross-examined at length, we do not find any material at all on record to even have any slightest doubt about their credibility. Their evidences are duly corroborated by the medical evidence also. From, these evidences, the prosecution has clearly established that it was this accused who caused the death of the deceased.

9. Now the question is as to what was the offence that was committed by this accused by the above said act. It is in evidence that there was a talk in the village that there was an illicit intimacy between the wife of the accused and the deceased for quite some time. It is also in evidence that few days before the occurrence, near the bus stop, the accused quarreled with the deceased and warned him not to have any illicit intimacy with his wife. On the day of occurrence, according to the evidence of P.W.2, the accused came to his shop to purchase cigarette. At that time, he was not armed with any weapon. Then, he had gone to the house of the deceased. P.Ws.1 and 3 had stated that when they rushed to the house of the deceased, they found the wife of the accused rushing out of the house of the deceased with her child. This would give a reasonable inference that the accused who entered into the house of the deceased would have noticed the deceased and his wife in a compromising position or in a foul circumstance. On seeing them together, the accused would have got provoked. It was

only, because of this provocation, which in our considered view, was grave and sudden, the accused had hit the head of the deceased against the floor. In our considered view, this act of the deceased would fall within the fourth limb of Section 300 of IPC. At the same time, it would squarely fall within the first exception to Section 300 of IPC. Therefore, the accused is liable to be punished for the offence under Section 304-II of IPC.

10. Now turning to the quantum of punishment, the accused is hardly aged about 33 years. He has got a wife and a child and a big family to take care of. He had got no bad antecedents. The occurrence was not a premeditated one. The accused was also not armed with any weapon. Having regard to all the mitigating as well as aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 4 weeks would meet the ends of justice.

11. In the result, the appeal is partly allowed in the following terms:

i. The conviction and sentence imposed on the appellant by the trial court for the offence under Section 302 of IPC are set aside and instead, he is convicted under Section 304-II of IPC and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 4 weeks;

ii. The conviction of the appellant for the offence under Section 449 of IPC is confirmed, however, the sentence of imprisonment is reduced to rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 4 weeks;

iii. It is directed that the above sentences shall run concurrently and the period of sentence already undergone by the appellant shall be given set off as required under Section 428 of Cr.P.C.; and

iv. Since the accused is on bail, the trial court is directed to secure the accused to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

tsi

To

1. The I Additional District and Sessions Judge
(Sessions Judge for Bomb Blast Cases),
Coimbatore.
2. The Judicial Magistrate No.II,
Coimbatore.
3. The Chief Judicial Magistrate,
Coimbatore. (For information)
4. The Inspector of Police,
B.9, Saravanampatty Police Station,
Coimbatore City.
5. The District Collector,
Coimbatore.
6. The Director General of Police,
Mylapore, Chennai.
7. The Superintendent,
Central Prison,
Coimbatore.
8. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.V.Bhiman, Advocate, S.R.No.47601

Cr1.A.No.303 of 2016

NR(CO)
CA(15/09/2016)

WEB COPY