

BAIL SLIP

The Appellant/Accused namely Bharath @ Barath was Ordered to be Released on Bail by Order of this Court Dated 27.02.2013 and made in Crl.M.P.No.1/2013 in Crl.A.No.124/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.A.No.124/2013

Bharath @ Barath ..Appellant/Sole Accused

-Versus-

The State by
The Inspector of Police
Palladam Police Station. ..Respondent

Appeal filed under section 374[2] Cr.P.C., against the judgment and sentence passed by the learned II Additional District and Sessions Judge, Tiruppur dated 29.10.2012 in SC.No.107/2012.

For Appellant : Mr.Babu Rangasamy

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

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

The appellant is the sole accused in SC.No.107/2012 on the file of the learned II Additional District and Sessions Judge, Coimbatore at Tiruppur. He stood charged for the offence u/s.302 IPC and vide judgment dated 29.10.2012, the Trial Court convicted him for the aforesaid offence and sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for three months. Challenging the said conviction and sentence, 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 Mr.Ranganathan. He was working in a private Textile Mill at Kunnangalpalayam village in Tiruppur District. The accused was also working in the same Mill. On one occasion, prior to the occurrence, since the accused did not perform the duty properly as instructed by the deceased, the deceased slapped him. The accused was aggrieved over the same. This is stated to be the motive for the occurrence.

[B] On 10.08.2009, before 18.00 hrs. when the deceased was staying in a room at Kunnangalpalayam village, the accused trespassed into the same, dropped a huge stone on his head and killed him on the spot. The occurrence was not witnessed by anybody. P.W.1 is the Administrative Officer of the said Mill. On 10.08.2009, at about 18.00 hrs. he received a message that the deceased was lying in his room unconsciously. He was also informed that a huge granite stone found on the head of the deceased and the deceased was found with injuries on his head. The room was meant for residence of the workers of the Mill. On receiving the said message, P.W.1 went to the place of occurrence and found the deceased dead. Immediately, he went to Palladam Police Station and made a complaint under Ex.P.1.

[C] P.W.9, the then Sub Inspector of Police attached to the Palladam Police Station at the relevant point of time, received the complaint and registered a case in Cr.No.104/2009 for the offence u/s.302 IPC. Ex.P9 is the Printed FIR. He forwarded both the documents, viz., Exs.P.1 and P.9 to the Court which were received by the learned jurisdictional Magistrate at 23.45 hrs on 10.08.2009.

[D] P.W.10, the then Inspector of Police, took up the investigation, proceeded to the place of occurrence and prepared an Observation Mahazar [Ex.P.2] and a Rough Sketch [Ex.P.10] in the presence of P.W.5 and another. He recovered blood stained earth [M.O.5] and the sample earth [M.O.6] and also the granite stone [M.O.1] from the place of occurrence under a Mahazar. He held inquest on the body of the deceased between 00.00 hrs. and 03.00 hrs on 10.08/11.08.2009 in the presence of Panchayatdars and witnesses. Thereafter, he forwarded the body of the deceased for postmortem through the Constable-P.W.8.

[E] P.W.7-Dr.Chandra, the then doctor attached to the Government Hospital, Palladam, conducted autopsy on the body of the deceased on 11.08.2009 at 15.45 hrs. He found the following injuries:-

"External Injuries:-

An antero-posterior laceration measuring 3x1cmxbone depth is present in the temporal region of the scalp about 4cm above the upper part of the left ear.

Dissection:- Hyoid and ribs - intact. Lungs intact and pale. Heart intact. Chambers empty. Abdomen:- Stomach contain 200gms of partially digested food particles. Liver, spleen and both kidneys intact and pale. Intestines distended with gas. Urinary bladder empty. Head:- Scalp- A subscalpal haematoma of about 20gms is present beneath the scalp of right temporal and occipital regions. Skull:- A circular cruciate fracture in the vault of the skull starting 2cm from right of midline in the frontal bone curving to the left, backwards and to the right and forwards ending in the right temporal bone approximately to a length of 24cm is present. Brain membranes:- A thin layer of subdural haematoma covering extra surface of brain about 50 gms is present. Subdural and subarachnoid haemorrhages are present in the entire surface of the brain. Bone of the skull:- A oblique commuted fracture 11x2-1cm involving the right middle and left anterior cranial fossa is present. Blood sample is preserved."

Ex.P.6 is the Postmortem Certificate. He gave opinion that the deceased had died due to shock and hemorrhage due to the head injury, 24-30 hours prior to autopsy. He further opined that the injuries would have been caused by a stone like M.O.1.

[F] Continuing the investigation, P.W.10, recovered the blood stained cloth of the deceased, viz., M.Os.8 to 10, under a Mahazar. He arrested the accused on 11.08.2009 at 17.15 hrs at Palladam Bus Stand in the presence of P.W.6 and another witness. On such arrest, he disclosed the place where he had hidden a blood-stained lungi [M.O.3]. In pursuance of the same, he took the police and the witnesses to the said place and recovered M.O.3 [lungi]. P.W.10 recovered the same under a Mahazar. He forwarded the accused to the Court for judicial remand and also the material objects. The material objects were sent for chemical examination, which revealed that blood stains were found on all material objects including the lungi, recovered from the accused. Since P.W.10 was transferred, the further investigation was taken up by his successor, P.W.11.

[G] P.W.11, upon completion of further investigation, has laid the charge sheet against the accused.

[H] Based on the above materials, the Trial Court framed a lone charge against the accused 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 11 witnesses were examined, 15 documents and 10 material objects were also marked.

[I] Out of the said witnesses, P.W.1 is the Administrative Officer of the Mill, who has stated that he heard about the occurrence, went to the place of occurrence, found the body of the deceased and made a complaint. P.W.2 is also an employee of the same Mill. He has stated that on the day of occurrence, around 12.30 hrs., the accused went out of the Mill to have lunch and at 18.00 hrs., on the same day, the dead body of the deceased was found in his room. P.W.3 has stated about the earlier quarrel between the accused and the deceased. P.W.4 has stated that he found the dead body of the deceased in his room. P.W.5 has spoken about the preparation of the Observation Mahazar and the Rough sketch and the recovery of the material objects. P.W.6 has spoken about the arrest of the accused and the disclosure statement and the consequential recovery. P.W.7 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.8 is the Constable who took the dead body of the deceased to the hospital and handed over the same to P.W.8 for postmortem. P.W.9 has spoken about the registration of the case. P.Ws.10 and 11 have spoken about the investigation done by them and the filing of the final report.

3. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. However, on the side of the accused, neither any witness was examined nor any document was marked.

4. Having considered all the above, the Trial Court convicted and sentenced him for the offence u/s.302 IPC, as detailed in the first paragraph of this judgment. Challenging the said conviction and sentence, the appellant/accused is before this Court.

5. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6. This is a case based on circumstantial evidence. As we have already pointed out, there is absolutely no evidence connecting the accused with the crime. From the evidences of P.Ws.1 to 4, what has been established is that there was some

quarrel, some time before the occurrence, between the accused and the deceased and thereafter, at 18.00 hrs on 10.08.2009, the dead body of the deceased was found. Though the prosecution relies on the recovery of lungi [M.O.3] at the instance of the appellant/accused, that by itself would not prove the guilt of the accused. As seen from the records, absolutely there is no evidence to convict the accused. But, the Trial Court has convicted the accused on mere surmise. Under Article 21 of the Constitution of India, the life and liberty of an individual can be deprived of only by following the procedure established by law. Such deprivation cannot be made by the Court on mere surmise or conjecture. As part of the procedure, the law requires that the guilt of the accused be proved beyond reasonable doubts. In the instant case, the Trial Court has convicted the accused only on mere surmise and therefore, the same is liable to be set aside.

7. In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellant/accused for the offence u/s.302 IPC by the Trial Court in SC.No.107/2012 dated 29.10.2012, are hereby set aside and the appellant/accused is acquitted of the charge leveled against him. It is reported that the appellant/accused is on bail. The bail bonds executed by him, shall stand discharged. Fine amount, if any paid, shall be refunded to him.

AP

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1.The II Additional District and Sessions Judge,
Tiruppur.
 - 1(a) The Chief Judicial Magistrate, Coimbatore.
 - 2.The Inspector of Police, Palladam Police Station,
Tiruppur.
 - 3.The Public Prosecutor, High Court, Madras.
 - 4.The Superintendent, Central Prison, Coimbatore.
 - 5.The District Collector, Coimbatore.
 6. The Director General of Police, Chennai-4.
- COPY TO :- The Section Officer, Criminal Section,
High Court, Mds-104.
- + 1 cc to Mr.Babu Rangasamy, Advocate Sr 23016

KR/27/4/16

Cr1.A.No.124/2013