

Bail Slip

Crl A.262 of 2013

The Appellant i.e., Sekar in Crl.A.No.262 of 2013 (Sole accused in S.C.No.95 of 2009 on the file of Principal Sessions Judge, Thiruvallur) was released on bail vide order of this Court, dated 16/04/2013 made in Crl.M.P.No.1 of 2013 in Crl.A.262 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.02.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.262/2013

Sekar

.. Appellant/sole accused

Vs

State by

The Inspector of Police,
K.K.Chathiram Police Station,
Thiruvallur District.
(Crime No.19 of 2007)

.. Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence dated 08.03.2013 made in S.C.No.95 of 2009 on the file of the learned Principal Sessions Judge, Thiruvallur.

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.M.Maharaja,
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by M.JAICHANDREN, J.]

The appellant stands convicted for the offence under Section 302 of I.P.C., by the learned Principal Sessions Judge, Thiruvallur, by his judgment, dated 08.03.2013, and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/-,

and in default, to undergo rigorous imprisonment for one year. Challenging the said conviction and sentence, the appellant/sole accused is before this Court with this appeal.

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

(2.1) The accused is a resident of Nasinatham Colony in Cuddalore Taluk. His wife was one Amudha. On 30.01.2007, at about 8.45 p.m., in front of the house of the accused, the accused and his wife had been quarreling with each other. The deceased in this case was one Ramesh. P.W.1 Ramesh, had come to the place of occurrence, on seeing the accused and his wife quarreling, the deceased had intervened and had attempted to dissuade them from doing so. However, he questioned the accused as to why he was fighting with his wife. But the accused had responded by saying that it was his family affair in which the deceased had no business to interfere. It is further stated that immediately, thereafter, the accused had pulled the legs of the deceased. The deceased had lost his balance and had fallen down. Then, it is alleged that the accused had pushed the deceased into a nearby empty Well, which had no water. This had taken place, at 8.45 p.m., on 30.01.2007. P.W.1 and some others had rescued the deceased from the Well. However, they had found that he was no more. Thereafter, P.W.1, had made a complaint to the police based on which Mrs.Kalaivani, the then Sub-Inspector of Police, K.K.Chathiram Police Station, had registered a case, in Crime No.19 of 2007, under Sections 341 and 302 of IPC.

(2.2.) P.W.10, had taken up the case for investigation, and had proceeded to the place of occurrence. He had prepared an Observation Mahazar and a Rough Sketch, at the place of occurrence, in the presence of P.W.6. At his request, P.W.7, the Photographer had taken photographs of the deceased, at the place of occurrence. Then, he had conducted an inquest on the body of the deceased and had forwarded the same for postmortem. P.W.2 had conducted the autopsy on the body of the deceased, on 31.01.2007, at 4.00 p.m. He found the following injuries:

"External Injuries:

1. 8 c.m. x 1 c.m. x bone deep laceration on the occipital of back of scalp;
2. 60 c.m. x 15 c.m. abrasion on the left side back of chest and left back of abdomen;
3. 5 c.m. x 4 c.m. abrasion on left shoulder;
4. 6 c.m. x 3 c.m. abrasion of left middle of leg;
5. 10 c.m. x 3 c.m. abrasion of left lower leg;
6. 10 c.m. x 5 c.m. abrasion on left foot;
7. 8 c.m. x 4 c.m. abrasion on right ankle;
8. 4 c.m. x 3 c.m. abrasion on left elbow;

9. 4 c.m. x 3 c.m. abrasion on left medial side of thigh;

10. 4 c.m. x 4 c.m. abrasion on the left hand elbow; and

11. 8 c.m. x 3 c.m. abrasion on the right side elbow.

Internal Examination :

Skull no fracture. Meninges : In tact 60 ml blood on the left adrenal region. Both cerebellum congested. 30 ml blood in the post cranial fossa. Neck normal. Both lungs congested. Heart : 100 ml of blood c/s. Congested. Liver c/s. Congested. Spleen : congested. Stomach 300 gram of undigested rice with smell of alcohol. Small intestine 30 ml. of yellow colour fluid. Kidney : both re-congested. Urinary Bladder : Empty. Viscera preserved and sent for analysis.''

Ex.P.2 is the Postmortem Certificate. He had given an opinion that the death was due to shock and hemorrhage, due to the injuries found on the dead body.

(2.3) On completing the investigation, P.W.10 had laid charge sheet against the accused.

3. Based on the above materials, the Trial Court had framed a charge, under Section 302 of I.P.C. against the accused. The accused had denied the same. In order to prove the case, on the side of the prosecution, as many as 10 witnesses were examined and 11 documents and 5 material objects were also marked.

4. Out of the said witnesses P.Ws.1 and 4, claimed to be eye-witnesses, had spoken about the entire occurrence. P.W.3, though examined as an eye-witness to the occurrence, had turned hostile and he has not supported the case of the prosecution, in any manner. P.W.5 has stated that he had heard about the occurrence and had come to the place of occurrence. P.W.7 has spoken about the photographs taken, and P.W.6 has spoken about the Observation Mahazar prepared at the place of occurrence. P.W.2 has spoken about the postmortem conducted by him and his final opinion regarding cause of death. P.W.10 has spoken about the investigation done and the final report filed by him.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he had denied the same as false. However, he did not choose to examine any witness, nor mark any document on his side.

6. Having considered all the above, the Trial Court had convicted the accused, and had sentenced him, as detailed in the first paragraph of this judgment. Challenging the said conviction and sentence, the appellant is before this Court, by way of this Criminal Appeal.

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

8. As we have already pointed out, the alleged occurrence was on 30.01.2007, at 8.45 p.m. P.Ws.1 and 4 claim that they were present at the time of occurrence and had witnessed the same. However, P.W.1, had given the complaint to the police, only at 1.00 p.m., on 31.01.2007. There is no explanation, whatsoever, for such a long delay in preferring the complaint. The First Information Report has reached the hands of the learned Magistrate, only at 04.30 p.m., on 31.01.2007, for which also there is no explanation. Had it been true that P.Ws.1 and 4 had witnessed the occurrence, nothing would have prevented them from going to the police with a complaint, at the earliest point of time. In the absence of any explanation for such delay in preferring the complaint, we are impelled to doubt the veracity of P.Ws.1 and 4.

9. P.W.4 has further admitted, during the cross-examination, that, on 31.01.2007, early in the morning, at 04.00 a.m., the police had arrived at the scene of occurrence and the Inspector of Police had examined him. From this evidence of P.W.4, it is crystal clear that even before the registration of the case at 1.00 p.m., there was some information to the Inspector of Police, based on which, he had gone to the place of occurrence, at 04.00 a.m., on 31.01.2007. Thus, the earliest information received by the Inspector of Police has been suppressed. Further, the motive for the occurrence has not been proved.

10. It is also noted that, P.W.1 has stated that both the accused, as well as the deceased were drunkards. He has further stated that the accused had pulled the legs of the deceased and the deceased had lost his balance and had fallen down and thereafter, he had pushed him into the Well. But P.W.4 has stated that the accused had pushed him into the Well. Though this contradiction appears to be minor in nature, in our considered view, it also needs weightage in the light of the effect that we have already concluded that the earliest information to the police has been suppressed and Ex.P.1 has

been brought into existence after some deliberation. These doubts, which had arisen, could not be cleared by the prosecution. Therefore, we find it difficult to sustain the conviction. We hold that the prosecution has failed to prove the case beyond reasonable doubt.

11. In the result, the appeal is allowed and the conviction and the sentence imposed on the appellant, by the trial court, by its judgment, dated 08.03.2013, are set aside and he is acquitted of the charge levelled against him. The bail bond, if any, executed shall stand discharged. The fine amount, if any, paid, shall be refunded to the accused.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Tiruvallur.
2. The Judicial Magistrate,
Thirutani.
3. The Chief Judicial Magistrate,
Thiruvallur.
4. The Inspector of Police,
K.K.Chathiram Police Station,
Thiruvallore District.
5. The Superintendent,
Central Prison,
Puzhal, Chennai.
6. The Superintendent of Police,
Thiruvallur District.
7. The District Collector,
Thiruvallur District.
8. The Public Prosecutor,
High Court, Chennai.

Cr1.A.No.262/2013

gj[co]
srg 02/05/2016