

Bail Slip

The appellant herein/Accused namely Elumalai @ Ravi @ Ravikumar accused in SC No.219/12 on the file of the I Additional Sessions Judge, Cuddalore was directed to be released on bail as per order of this Court dated 15/4/2013 made in MP 1/13 in CrI A 272 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 15.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE Mr. JUSTICE P.KALAIYARASAN

Criminal Appeal No.272 of 2013

Elumalai @ Ravi @ Ravikumar

... Appellant/Accused

Vs.

The State by
The Inspector of Police
Cuddalore Mudunagar Police Station.
[Crime No.66/2010]

... Respondent/Complainant

Criminal Appeal filed under Section 374 [2] of the Code of Criminal Procedure, against the Judgment dated 30.10.2012 passed in S.C.No.219 of 2012 on the file of the I Additional District and Sessions Judge, Cuddalore.

For Appellant : Mr.S.Pushpakaran

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

J U D G M E N T

[Judgment of the Court delivered by P. KALAIYARASAN, J.]

The appellant-accused has been convicted by the trial Court for the offence under Section 302 IPC and sentenced to undergo imprisonment for life and also to pay a fine of Rs.10,000/-, in

default, to undergo rigorous imprisonment for one year. The fine amount has also been ordered to be paid as compensation to the children of the deceased, namely, P.W.2 and P.W.3. Challenging the conviction and sentence, this appeal has been preferred.

2. The short facts leading to the filing of the appeal are as follows:

[a] The accused suspecting the fidelity of his wife and suspecting that she took away the money from the pocket of the accused, took her from the house to Karuvattuthidal in Cuddalore Mudunagar at 7.00 a.m. on 25.02.2010 and stabbed her on her neck and right shoulder by catching her hair and when she ran and fell down, he again stabbed on her back, resulting in her death.

[b] The deceased Malliga married the accused and got two children, namely, Kalyani aged 14 years and Subash aged 9 years. The accused often quarrelled with his wife. The deceased was residing in the house of her mother, who already passed away. On 25.02.2010 at 6.30 a.m., the accused was taking the deceased Malliga out and beat her on the way in Mohan Street to Karuvattuthidal. The children P.W.2 Kalaivani and P.W.3 Subash, followed their parents. P.W.1, Radhika, who is residing nearby, on receipt of phone call from her senior mother, went to Karuvattuthidal. There the accused, stabbed the deceased Malliga, on her neck and right shoulder, due to which, she fell down. Again the accused, stabbed her on her back and fled away, after ascertaining that the deceased lost her breath.

[c] P.W.1 went to the Police Station and lodged a complaint Ex.P1. Mr.Ponraj, Sub Inspector of Police, on receipt of the complaint, registered F.I.R. and sent the same to the Judicial Magistrate Court. P.W.9 - Mr.T.Kannan, Inspector of Police, on receipt of the F.I.R - Ex.P14 at 9.30 a.m, took up the case for investigation. He went to the scene of crime at 9.45 a.m. and prepared an observation mahazar, Ex.P9 in the presence of P.W.6 and other witnesses. He also drew a rough sketch - Ex.P8. He recovered blood stained cement plaster, sample under mahazar - Ex.P10, in the presence of the same witnesses. He held inquest, in the presence of the panchayatdars and prepared inquest report - Ex.P15. Then, he sent the body for post-mortem.

[d] P.W.4 - Dr.Lavanya, on receipt of the requisition from the Investigating Officer through P.W.8, conducted autopsy at 2.00 p.m. on 25.02.2010 and found the following injuries :

"1. penetrating stab injury extending from right sternomastoid to it. Sternomastoid of length 6x3x2cm injury the carotid artery and hyoid bone

and exist through the left sternomastoid.
2. stab injury 3x2x2cm on right shoulder.
3. stab injury 3x1x1cm on posterior part of neck near left scapula. RM present in all 4 limbs. Scalp normal. Eyelids closed. No discharge. Mouth and lips closed. Tongue inside the mouth. Teeth intact. Ears no discharge. Thorax normal. Abdomen mildly distended. Extremities hands empty. Ribs intact. Heart pale. Cardiac chamber empty. Lungs, liver, spleen, kidney, intestine pale. Hyoid bone not intact. X-ray taken No.01/10275-25.2.10. Stomach empty and pale. Mucus pale. No contact. Skull intact. Brain pale, stomach, intestine, liver, kidney, ... taken and sent for chemical analysis. Final report received. Pending for chemical analysis report."

[e] After getting Viscera Report, the Doctor opined that the deceased would appear to have died due of carotid artery injury with haemorrhage shock. The Post-mortem Certificate is Ex.P3; chemical examination reports are Ex.P4 and Ex.P5. P.W.8 - Ms.Prema, Senior Head Constable, recovered the clothes on the body and handed over to the Investigating Officer. The Investigating Officer arrested the accused at 3.00 p.m. on 27.10.2010 at casuarina thoppu [bushes]. He recorded the confession statement given by the accused in the presence of P.W.7 - Ramesh and other witnesses. The disclosure statement of the accused leading to the recovery of M.O.1 is Ex.P12. Pursuant to the disclosure statement, the accused took the Investigating Officer and the witnesses to the northern side of the Karumariamman Koil and took out the blood stained knife from a bush on the river side and handed over the same to the Investigating Officer. He recovered the knife - M.O.1 under Mahazar - Ex.P13 and on the next day, he sent the accused to the Court for remand. He also sent the Material Objects to the Court along with requisition. At the request of the Investigating Officer, Material Objects were sent by the Court to the Forensic Department for chemical examination. P.W.5 - Selvarani, Assistant Director, Forensic Department, Villupuram, examined the Material Objects and sent Biological Report - Ex.P6 with Serology Report - Ex.P7. P.W.10, the successor of P.W.9, verified the earlier investigation and laid the charge sheet against the accused.

3. In order to prove its case, the prosecution examined 10 witnesses and marked 16 Exhibits, apart from 6 Material Objects. When the trial Court questioned the accused under Section 313 Cr.P.C., with respect to the incriminating materials appeared against him, he denied the same as false. After analysing the evidence, the trial Court convicted the accused and sentenced as afore said.

4. P.W.1 to P.W.3 are the eye-witnesses in this case. P.W.2 and P.W.3 are the children of the accused. P.W.1, the sister of the deceased, came to the place of occurrence, on hearing the message over cellphone about taking out the deceased by the accused from the house and witnessed the occurrence. At the time of deposition [i.e., on 03.10.2012], the age of P.W.2 and P.W.3 is noted as 17 and 12 years. The occurrence took place on 25.02.2010. Therefore, the age of the above witnesses P.W.2 and P.W.3 at the time of occurrence would be 14 and 9 respectively. No doubt, the evidence of a child witness must be scrutinised more carefully with greater circumspection, because the child witness are prone to tutoring.

5. It is worth mentioning the judgment of the Supreme Court in Rajkumar Vs State of Madhya Pradesh, reported in (2014) 5 SCC 353. In the above said ruling, it has been held as follows:

"... It is a settled legal proposition of law that every witness is competent to depose unless the court considers that he is prevented from understanding the question put to him, or from giving rational answers by reason of tender age or extreme old age or disease or because of his mental or physical condition. Therefore, a court has to form an opinion from the circumstances as to whether the witness is able to understand the duty of speaking the truth, and further in case of a child witness, the court has to ascertain that the witness might have not been tutored. Thus, the evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him. The trial court must ascertain as to whether a child is able to discern between right or wrong and it may be ascertained only by putting the questions to him."

6. In this case, the trial Court put questions to both the child witnesses and the trial Court, after satisfying itself that the child witnesses were able to discern between right and wrong, proceeded to record their evidence.

7. We have also perused the evidence of the child witnesses, namely, P.W.2 and P.W.3, very carefully and we are also satisfied that the witnesses were able to understand the implications of what they were saying. P.W.2 and P.W.3 have

categorically deposed that when the accused was taking out the deceased Malliga from the house, the younger child P.W.3 Subash also followed them. The accused started beating the deceased, while they were going through Mohan Street. When the accused started beating the deceased, P.W.3 came to his senior grandmother and informed her about the occurrence. Senior grandmother, in turn, informed P.W.1 over cellphone and thereafter, P.W.2 and P.W.3 along with grandmother proceeded to Karuvattuthidal. P.W.2 and P.W.3 further deposed that they saw the accused, stabbing their mother on her neck and right shoulder and when she fell down, he again stabbed her on her back.

8. We do not see any thing on record to even infer tutoring. The evidences of both the children are very natural and trust worthy. We do not see any reason to reject the evidences of the above said children. P.W.1 also corroborated the evidence of the above witnesses.

9. Another corroborating factor is recovery of M.O.1 - knife, pursuant to the disclosure statement of the accused, which contains human blood of "B" group. P.W.7 and the Investigating Officer - P.W.9 have deposed that the accused voluntarily gave the disclosure statement and pursuant to his confession, M.O.1 - knife was recovered. The evidence of the above witnesses, with respect to the recovery of knife, pursuant to the confession statement, could not be shattered in any way during cross-examination. P.W.4 - Doctor has also deposed that the injuries found on the body of the deceased, could have been caused with M.O.1. As per the Serology Report - Ex.P7, blouse and the saree recovered from the body of the deceased and also the knife recovered from the accused, pursuant to the confession statement, contain human blood group "B". Therefore, it is clear that the accused used M.O.1 - knife to kill his wife. Thus, the prosecution has proved the culpability of the accused through the above evidence beyond all reasonable doubt.

10. The learned counsel for the appellant contends that there was a delay in forwarding the F.I.R. to the Court. Of course, it is true, but, that would not cause any doubt in the evidence of P.W.s 1 to 3, who are the eye-witnesses to the occurrence.

11. The learned counsel for the appellant also submits that there was a quarrel indicating provocation, but, a close scrutiny of the evidence of P.W.s 1 to 3 would go to show, that the deceased was taken all the way by the accused

with an intention to cause her death. Therefore, the question of provocation does not arise in the matter. Hence, we are of the considered view that the trial Court has rightly convicted the appellant under Section 302 IPC.

12. In the result, the Criminal Appeal is dismissed and the conviction and sentence passed on the appellant by the trial Court stands confirmed. Since, the accused is on bail, the Sessions Judge is directed to take steps to secure him and commit him to prison to undergo the remaining period of sentence. The period of imprisonment already served by the appellant/accused shall be given set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The principal District Judge,
Cuddalore.
2. The I Additional District and Sessions Judge,
Cuddalore.
3. The Judicial Magistrate No.2,
Cuddalore.
4. The Chief Judicial Magistrate,
Cuddalore.
5. The Inspector of Police,
Cuddalore Mudunagar Police Station.
6. The Superintendent,
Central Prison, Cuddalore.

7. The Public Prosecutor
High Court, Madras.

8. The Section Officer,
Criminal Section,
High Court, Madras-104.

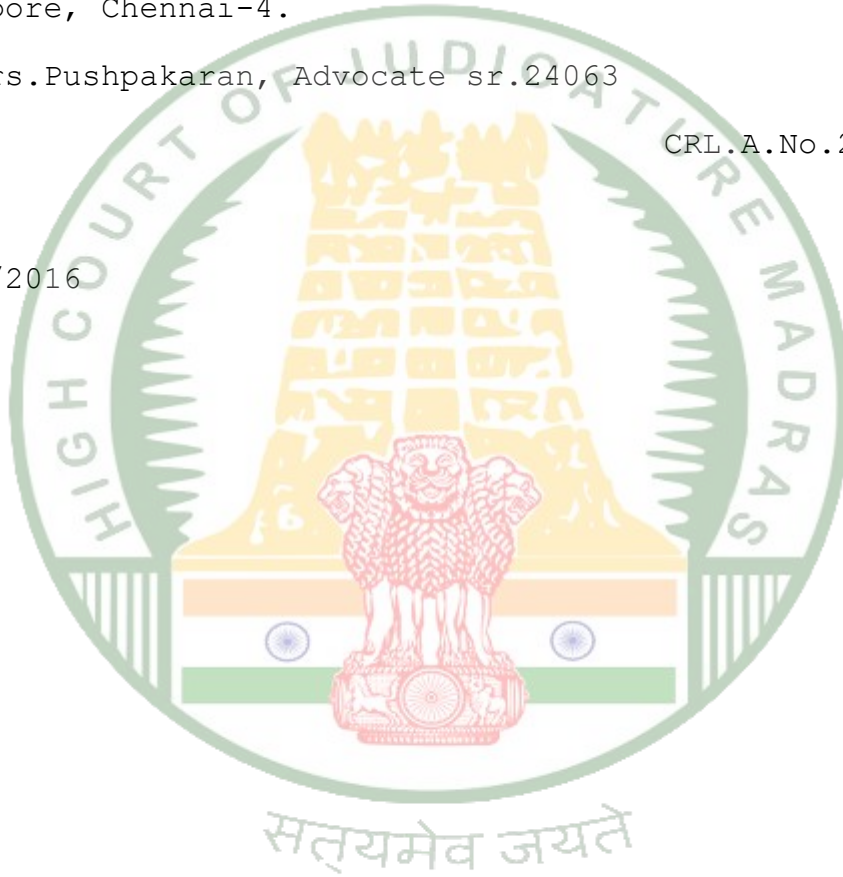
9. The District Collector,
Cuddalore.

10. The Director General of Police,
Mylapore, Chennai-4.

+1cc to Mrs.Pushpakaran, Advocate sr.24063

CRL.A.No.272 of 2013

kgk[co]
srg 17/06/2016



WEB COPY