

Bail Slip

The Appellant/Accused No.I, Viz, K. Subramani, S/o. Kurrappa, was released on Bail dated 31.10.2012 in MP.No.1/2012 in CrI.A.No.742/2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-02-2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

CRIMINAL APPEAL No.742 of 2012

K.Subramani ... Appellant/First Accused

vs

The State represented by
Inspector of Police
Uthanapalli Police Station
Krishnagiri District
(Crime No.46/2010) ... Respondent/complainant

Criminal appeal preferred under Section 374(2) of the Code of Criminal Procedure against the judgment dated 25.8.2012, made in S.C.No.87 of 2010, on the file of the Court of District Principal and Sessions Judge, Krishnagiri.

For Appellant : Mr.R.Parthiban
for Mr.G.M.Anantha Kumar

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is the first accused in S.C.No.87/2010, on the file of the Principal District and Sessions Judge, Krishnagiri. The second accused was one Aanchi @ Aanchiyappa. The trial Court framed charges under Sections 302 and 201 read with 302 of I.P.C. against the appellant and under Section 302 read with 109 of I.P.C. against the second accused. By judgment dated 25.8.2012, the trial Court acquitted the second accused,

but convicted the appellant under Sections 302 and 201 read with 302 of I.P.C., and sentenced him to undergo Imprisonment for Life and to pay a fine of Rs.10,000/-, in default to undergo Rigorous Imprisonment for six months, for the offence under Section 302 of I.P.C. and to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.2,000/-, in default to undergo Rigorous Imprisonment for three months, for the offence under Section 201 read with 302 of I.P.C. Challenging the same, the appellant is before this Court with this appeal.

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

2(i) The appellant was a Driver by profession. He was employed to drive the lorry belonging to the second accused. The second accused had borrowed a sum of Rs.66,000/- from the deceased Santhamoorthy, six months prior to the occurrence. But, he did not repay the said amount. On 20.3.2010, at about 4.30 P.M., the appellant had taken the lorry to a Puncture Shop at Beerjepalli Village on the Hosur to Agaram Road. The lorry was parked there and the puncture work was going on. At that time, the deceased came to the shop. He told the appellant that he would not allow him to take the vehicle unless the second accused viz. the employer of the appellant, repays the money. The appellant contacted the second accused over phone. The second accused induced the appellant to dash the lorry against the deceased and escape from the scene of occurrence.

2(ii) When the deceased was standing behind the lorry, the appellant suddenly took the lorry backwards and dashed against the deceased. The deceased was ran over by the backside wheel of the lorry. Then, the appellant escaped from the scene of occurrence with the lorry.

2(iii) P.Ws.1 to 5 claimed to have witnessed the occurrence. P.W.1, immediately, went to Uthanapally Police Station and at 10.00 P.M., made a complaint. P.W.9, the then Sub-Inspector of Police, received the complaint and registered a case in Crime No.46/2010 under Section 302 of I.P.C., against both the accused. Ex.P1 is the complaint and Ex.P7 is the First Information Report. He forwarded both the documents to Court, which were received by the learned Magistrate at 3.00 A.M. on 21.3.2010. Then, he handed over the Case Diary to the Inspector of Police for investigation.

2(iv) P.W.10, the then Inspector of Police, took up the case for investigation. He proceeded to the place of occurrence at 6.00 A.M. on 21.3.2010, and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.6 and another witness. Then, he proceeded to the Hospital and between 8.30 A.M. and 10.00 A.M., he conducted inquest on the body of the deceased. He then, forwarded the body for postmortem.

2(v) P.W.8 Dr.Magesh, conducted autopsy on the body of the deceased on 21.3.2010. He found the following injuries:-

"External Injuries:

(1) Abrasion right shoulder 11 cm x 6 cm reddish in colour. (2) Abrasion right elbow 8 x 6 cm. (3) Abrasion above right elbow 4 cm x 2 cm. (4) Abrasion right hand dorsum 3 cm x 3 cm. (5) Right thigh. Imprint abrasion 44 x 14 cm red in colour. (6) Right knee abrasion 4 cm x 2 cm. (7) Abrasion over right side of chest 2 cm x 2 cm. (8) Abrasion 4 x 3 cm. 4cm below left scapula. (9) Abrasion left gluteal region 5 x 3 cm. (10) Imprint abrasion left scapula 12 cm x 2 cm. (11) Abrasion right frontal area of scalp 5 x 3 cm. (12) Abrasion right temporal area 3 x 3 cm. (13) Laceration left occipital area of scalp 5 x 3 x 1 cm - bleeding.

Internal Examination:

(1) Hyoid bone - intact. (2) Fracture ribs 6,7,8,9,10 right side. Left side - intact. (3) Heart 190 gms. Chambers empty. Pale. (4) Lungs - Right 360 gms, lacerated. Left - 330 gms. Pale. (5) Liver - Irregular laceration over liver. Pale. (6) About 900 ml of blood in peritoneal cavity. (7) Stomach contains 150 gms of semi-digested rice. (8) Kidneys - 110 gms each. Pale. (9) Spleen - 100 gms. Pale. (10) Bladder empty. (11) Skull - intact. (12) Membrane - intact. (13) Brain 1300 gm. Pale. (14) Base of Skull - intact."

Ex.P5 is the postmortem certificate. He gave opinion that the death was due to internal injuries found on the body of the deceased.

2(vi) During the course of investigation, P.W.10 found the first accused along with the lorry bearing Registration No.TN 36 A 1969, at 12.15 P.M. on 21.3.2010. He arrested the first accused in the presence of P.W.7 and another witness. He recovered the lorry in the presence of the said witnesses. Then, he arrested the second accused on the same day. Thereafter, he handed over the Case Diary to the successor for continuation of investigation.

2(vii) P.W.11, the then Inspector of Police, took up the case for further investigation. He collected the call details of the cellphone of the appellant bearing No.996667738. Then, on completing the investigation, he laid the 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, which the accused denied. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined and 10 documents were marked. The lorry in question, has been marked as M.O.1.

4. Out of the said witnesses, P.Ws.1 and 4 have turned hostile, though they were examined as eyewitnesses. They have not stated anything in favour of the prosecution. P.Ws.2, 3 and 5 have stated about the occurrence. P.W.6 has stated about the Observation Mahazar and the Rough Sketch prepared at the spot. P.W.7 has spoken about the arrest of the accused and the recovery of M.O.1 lorry. P.W.8 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.9 has spoken about the registration of the case and P.Ws.10 and 11 have spoken about the investigation. P.W.12 is yet another eyewitness, who has spoken about the entire occurrence. P.W.13 Dr.Gnanameenakshi, has stated that on 20.3.2010, at 5.15 P.M., when she was in the Hosur Government Hospital, the deceased was brought for treatment, and when she examined him, she found the deceased in a serious condition. She noticed four injuries on his body, as follows:-

- (i) A contusion measuring 5 x 3 cm on the right side of the forehead;
- (ii) An abrasion measuring 6 x 3 cm on the right side of the forehead near injury No. (i);
- (iii) An abrasion measuring 10 x 5 cm on the right hand and
- (iv) An abrasion measuring 25 x 15 cm on the right thigh.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor to mark any document. But, the first accused took a plea that the deceased made a sudden cross and met with the accident, for which, according to him, he was not responsible. Having considered all the above, the trial Court acquitted the second accused and however, convicted the appellant/first accused as detailed in the first paragraph of this judgment, and that is how, the first accused is before this Court with this appeal.

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

7. As we have already pointed out, to prove the occurrence, the prosecution relies on the evidences of P.Ws.2, 3, 5 and 12. P.Ws.2 and 3 have stated about the presence of the other eyewitnesses also. They have stated that the deceased

told the appellant not to move the vehicle, unless his owner (second accused) repays the amount to him. They have further stated that the appellant told the deceased that he would stop the vehicle; but, instead, he took the vehicle backwards and at that time, the deceased came to the front side of the lorry. They have further stated that suddenly, the appellant took the lorry forwards, dashed against the deceased and escaped from the scene of occurrence with the lorry. P.W.5 has also stated so. But, P.W.12 has stated that the appellant took the lorry backwards and dashed against the deceased, who was standing behind the lorry, and thus, the left side back wheel of the lorry ran over him.

8. The charge framed in this case, states that the appellant took the lorry backwards and dashed against the deceased. Thus, the evidences of P.Ws.2, 3 and 5 are not in conformity with the charge. Their evidences are in total variation to the evidence of P.W.12. The prosecution has not offered any explanation for this contradiction. Thus, there are two sets of evidences now let in by the prosecution. Therefore, it is difficult to accept either the evidences of P.Ws.2, 3 and 5, or the evidence of P.W.12, which are totally contradictory. From these evidences, we find it difficult to hold that the appellant had committed the murder of the deceased.

9. The defence taken by the appellant itself, is that when he was driving the lorry forwards, unexpectedly and suddenly, the deceased made a cross and invited the incident. Thus, the case of the appellant itself is that it was an accident. If that be so, it is not made known to the Court why the appellant without caring to take the deceased to the hospital to save him, took away the lorry and escaped from the scene of occurrence. If it is an accident, it is to be examined whether the accident was due to rashness or negligence on the part of the appellant. In the instant case, though we are of the view that the prosecution has failed to prove the charges under Sections 302 and 201 read with 302 of I.P.C., certainly it needs to be examined whether the appellant is liable for punishment under Section 304A of I.P.C. We are not in a position to examine the same, because the appellant was not put on notice of the said accusation under Section 304A of I.P.C., and there was no alternative charge framed by the trial Court under Section 304A of I.P.C.

10. Therefore, in our considered view, the conviction and sentence imposed on the appellant for the offences under Sections 302 and 201 read with 302 of I.P.C., are liable to be set aside and the matter needs to be forwarded to the learned Chief Judicial Magistrate, Krishnagiri, for trying the appellant for the offence under Section 304A of I.P.C. by following the procedure established.

11. In the result, the criminal appeal is allowed; the conviction and sentence imposed on the appellant for the offences under Sections 302 and 201 read with 302 of I.P.C., are set aside and the case is forwarded to the learned Chief

Judicial Magistrate, Krishnagiri, who shall try the appellant for the offence under Section 304A of I.P.C., by following the procedure established by law, and then, dispose of the case in accordance with law. The appellant shall continue to be on bail till the disposal of the case by the learned Chief Judicial Magistrate.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To:

- 1.The Principal District and Sessions Judge
Krishnagiri
 - 2.The Chief Judicial Magistrate, Krishnagiri
 - 3.The Inspector of Police
Uthanapalli Police Station
Krishnagiri District
(Crime No.46/2010)
 - 4.The Public Prosecutor
High Court, Madras
 5. The Section Officer, Criminal Section,
High Court, Madras.
 - 6.The Judicial Magistrate No.I, Hosur.
 7. The Superintendent Central Prison, Vellore.
- + 1 cc to Mr.G.M. Ananthakumar, Advocate SR.12012

CRL.A.No.742 of 2012

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