

BAIL SLIP

The Appellant/Petitioner Viz., Krishnan aged 26 Years, S/o.Chinnappan, was directed to be released on bail as per Order dated 15.03.2013 made in M.P.No.1 of 2013 in Crl.A.No.896 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2016

CORAM:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU
and
THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

Criminal Appeal No.896 of 2012

Krishnan ... Appellant/Sole accused

Vs.

State by

The Inspector of Police,
Eriyur Police Station,
Pennagaram Taluk,
Dharmapuri District.
Crime No.108/2011

... Respondent/Complainant

Prayer : Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 19.06.2012 passed by the learned Principal Sessions Judge, Dharmapuri made in S.C.No.88/2011.

For Appellant : Mr.M.G.Udayashankar
for M/s.Shanthakumari

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by
M.SATHYANARAYANAN, J.)

The sole accused in S.C.No.88 of 2011 on the file of the Principal Sessions Judge, Dharmapuri is the appellant and he stood charged and tried for the commission of offences under Sections 302 and 307 IPC. The trial Court, vide judgment dated 19.06.2012, has convicted the appellant for the offences under Sections 302 and 326 IPC and sentenced him to undergo imprisonment for life with a fine of Rs.1000/- in default to

undergo 3 months simple imprisonment for the offence under Section 302 IPC and sentenced him to undergo 3 years rigorous imprisonment with a fine of Rs.1,000/- in default to undergo 3 months simple imprisonment for the offence under Section 326 IPC.

2. Facts leading to the filing of this appeal are as follows:

2.1. The deceased, namely Ramya, aged about 19 years was the wife of the appellant/accused and they loved each other and married about 2 ½ years prior to the year 2011. Matrimonial life between them was not happy and both of them often quarrelled with each other and more so by the appellant. Therefore, Ramya left the matrimonial home and came to her parental home. The appellant came to his mother-in-law's house on 28.04.2011 at 5.00 p.m. and asked his wife to come and live with him and it was refused and thereafter, the appellant/accused quarreled with her and left the place. At about 2.00 a.m. on 29.04.2011, the appellant/accused came to his mother-in-law's house and brutally attacked his wife with "Arivaamanai" [used for cutting vegetables) and the inmates of the house, namely PW1/mother-in-law of the appellant, her son/PW3 and daughter/PW4 had also witnessed the occurrence. When they made attempts to prevent him, they were inflicted with injuries. Ramya died on the spot.

2.2. PW12 was working as Sub-Inspector of Police, Eriyur Police Station at the relevant point of time and while he was on duty, ten persons came to the police station at about 5.00 a.m. on 29.04.2011 and informed him that near Eriyur Mariamman Temple, somebody has cut the neck of one lady and he went to the scene of occurrence and returned to the police station and PW1 appeared before him and gave a complaint under Ex.P1, based on which PW12, has registered an F.I.R. in Crime No.108/2011 and the printed F.I.R. was marked as Ex.P14. PW14 dispatched the original copy of F.I.R. along with the complaint to the jurisdictional Magistrate and also informed his higher official and also forwarded the copies.

2.3. PW14, on receipt of the F.I.R., continued with the investigation on 29.04.2011 and at about 8.45 a.m. he reached the place of occurrence and prepared Observation Mahazar, marked as Ex.P2 and Rough Sketch, marked as Ex.P15 in the presence of PW8 and another and also examined PWs.1, 2, 3, 4, 8 and others. PW14 also conducted inquest on the body of the deceased in the presence of panchayatdars and the Inquest Report was marked as Ex.P16. PW14 sent a requisition for conducting postmortem on the body of the deceased and after obtaining requisite permission, sent the body to the Government Hospital, Pennagaram through the Head Constable/PW13 for conducting postmortem.

2.4. PW9 was the Medical Officer attached to the Government Hospital, Pennagaram and he, on receipt of the body, commenced the postmortem at about 1.00 p.m. on 29.04.2011 and noted the following features:

1. A cut injury from the right side of the neck from back side to centre of the front neck measuring 12 x 5 x 6 c.m. Neck bone was visible.
2. Another cut injury below the 1st injury measuring 4 x 1 x 2 c.m.
3. Another cut injury above the 1st injury measuring 5 x 0.5 c.m.

PW9, after completion of postmortem, has opined that the deceased would appear to have died due to shock and hemorrhage and also due to deep cut injury. The Postmortem Report was marked as Ex.P7.

2.5. PW14 also sent PW5 for treatment and PW10, Casualty Medical Officer, examined him at 4.00 a.m. on 29.04.2011 and after examining him, certified that the injury sustained was grievous in nature and the Wound Certificate was marked as Ex.P8. PW14 effected arrest of the appellant/accused on 01.12.2011 at 5.00 a.m. near Nallampalli Bus stop in the presence of PW8 and another and the accused voluntarily came forward to give confession statement and as per the admissible portion of the confession statement, marked as Ex.P5, the weapon used for commission of the crime, namely Arivaamanai/M.O.1 was recovered under Mahazar/Ex.P2 and also sent a requisition under Ex.P9 for sending the case properties for chemical analysis. PW14 examined PWs.5, 6, 9 and 12 and obtained their statements and also examined PW10. PW14 also made arrangements to take photographs of the scene of occurrence, which were marked as M.O.4 series and after receipt of Chemical Examination Report and other materials, completed the investigation and filed charge sheet/final report on 27.06.2011, charging the accused for the commission of the offences under Sections 302 and 307 IPC, on the file of the Court of Judicial Magistrate, Pennagaram which took it on file in P.R.C.No.6/2011.

2.6. The committal Court, on receipt of the final report, issued summons to the appellant/accused and on appearance of the appellant/accused, furnished him copies of documents under Section 207 CrPC and having found that the case is exclusively triable by Sessions Court, committed the same to the Principal Sessions Judge, Dharmapurai, who took it on file in S.C.No.88/2011. The Sessions Court, on appearance of the accused, framed charges for the above sections and questioned him and the accused pleaded not guilty to the charges framed against him.

2.7. The prosecution, in order to sustain their case, examined PWs.1 to 14, marked Exs.P1 to 17 and also marked M.Os.1 to 4. The appellant was questioned under Section 313(1)(b) with regard to incriminating circumstances made out against him in the charge sheet rendered by the prosecution and he denied it as false. No witness was examined and no document was marked on behalf of the appellant/accused. The trial Court, on

consideration of oral and documentary evidence, convicted and sentenced the appellant as stated above and hence, this appeal.

3. The learned counsel appearing for the appellant would submit that the trial Court has committed grave error in believing the testimony of interested witnesses and even otherwise their testimonies did not corroborate with each other in material particulars. It is the further submission of the learned counsel appearing for the appellant that admittedly the marriage between the appellant/accused and the deceased was a love marriage and even as per the version of the prosecution, they used to quarrel with each other and hence, there is no occasion for the appellant/accused to come during midnight and commit the murder and he has been falsely implicated. It is also contended by the learned counsel appearing for the appellant that since the occurrence took place in dark hours inside the house, the identity of the accused itself was highly doubtful and the trial Court, without appreciating the inconsistencies and infirmities in the case projected by the prosecution, has erroneously convicted and sentenced the appellant/accused and would alternatively contend that even this Court comes to the conclusion that the appellant/accused has committed the murder, the conviction and sentence may be modified for the reason that just prior to the alleged occurrence, there was wordy quarrel between the deceased and the accused.

4. Per contra, Mr.M.Maharaja, learned Additional Public Prosecutor would contend that though the witnesses are closely related to the deceased, the fact remains that they have spoken about the motive as well as the overt act on the part of the appellant/accused in clear terms and nothing useful has been elicited in his favour and since the trial Court, on an elaborate consideration and appreciation of oral and documentary evidence, has reached the conclusion of guilt on the part of the accused, which may not be lightly interfered with by this Court in exercise of appellate jurisdiction and prays for dismissal of this appeal.

5. This Court has carefully considered the rival submissions and also perused the oral and documentary evidence as well as original records.

6. As rightly contended by the learned Additional Public Prosecutor that the motive for commission of the offence was that the deceased/wife did not want to join and live with the appellant/accused and according to the prosecution, there were frequent quarrel between him and his wife. The appellant/accused on the fateful date of occurrence at about 5.00 p.m. came to his mother-in-law's house and asked his wife to come and live with him, but she did not acceded to his words and therefore, enraged by the same, he went back and at about 2.00 a.m. on 29.04.2011, came back to his mother-in-law's house and took Arivaamanai which was in the house and committed the murder of his wife.

7. A perusal of the testimonies of the eye witnesses, namely PWs.1, 2, 4 and 6 would clearly reveal that it was the accused who committed murder of his wife and in the process, also inflicted injuries to PWs.5 and 6. The prosecution did not mark any document as to the injury sustained by PW5, but marked Ex.P8 for injuries sustained by PW6 and also examined PW10, the Doctor who treated him. The postmortem report marked as Ex.P7 issued by PW9 would also disclose that the deceased died on account of cut injury inflicted by using Arivamanai and therefore, the scientific evidence also supports the case of the prosecution. Therefore, this Court is of the view that the prosecution has proved its case beyond any reasonable doubt.

8. Insofar as alternate plea submitted by the learned counsel appearing for the appellant/accused, it is to be noted at this juncture that as per the case of the prosecution, there was a frequent quarrel between the appellant/accused and his wife/deceased, though it was a love marriage. The appellant/accused came to his mother-in-law's home at about 5.00 p.m. on 28.04.2011 and asked his wife to come to her matrimonial home and it was refused and enraged by the same, he came back at about 2.00 a.m. on 29.04.2011 and took Arivamanai, which was in the house and cut her neck and on hearing the sound, PW1 and her sons and daughter woke up and PWs.5 and 6 were also attacked and PW6 was treated by PW10, who has also issued the Wound Certificate under Ex.P8.

9. The appellant/accused was in a agitated frame of mind and enraged by the refusal on the part of the deceased to come back to her matrimonial home and live with the appellant/accused, he has in a fit of rage and unable to control his anger and emotions, he has done away with the life of his wife. The above said act of the appellant/accused comes within Exception 4 of Section 302 IPC and it is also to be noted that the appellant/accused did not carry any weapon, but took Arivamanai which was in the house and committed the murder. The appellant/accused had intention to cause bodily injury which is likely to cause death and therefore, he is liable to be punishable under 304-I IPC. However, insofar as inflicting injury to PW6 is concerned, this Court is of the view that the said conviction and sentence for the commission of offence under Section 326 IPC does not require any modification.

10. In the result, this Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant/accused under Section 302 IPC is set aside and instead he is convicted under Section 304-I IPC and sentenced to undergo rigorous imprisonment for 10 years with a fine of Rs.1,000/- in default to under simple imprisonment for 3 months. The conviction and sentence imposed on the appellant/accused for the offence under Section 326 IPC is maintained and the sentences are ordered to run concurrently and he is also entitled to get set off under Section 428 CrPC. Since the sentence of imprisonment has been

suspended by this Court while entertaining the appeal, the respondent police is directed to take immediate steps to secure the custody of the appellant/accused and produce him before the Court of Principal Sessions Judge, Dharmapuri for committing him to prison. Bail bonds executed shall stand terminated.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Principal Sessions Judge,
Dharmapuri
2. The Inspector of Police,
Eriyur Police Station,
Pennagaram Taluk,
Dharmapuri District.
3. The Superintendent,
Central Prison,
Salem.
4. The Public Prosecutor,
Madras High Court, Chennai.

Criminal Appeal No.896 of 2012

VGI (CO)
CA(22/03/2016)

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