

Bail Slip

The Appellants i.e. N. Vasuki, N. Nagalingam in Criminal Appeal No.939 of 2007 (Accused 1 and 2 respectively in S.C.NO.302 of 2006 on the file of the Additional District and Sessions - Judge, Fast Track Court No.3, Coimbatore) were released on bail vide order of this Court, dated 22.10.2007 and made in Crl.M.P.NO.106 of 2007 in Crl.Appeal No.939 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.939 of 2007

1.N.Vasuki

2.N.Nagalingam ... Appellants/Accused 1&2

vs.

State, represented by
The Inspector of Police,
Thudiyalur Police Station, ... Respondent
Coimbatore. (Crime No.405 of 2006)

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 26.09.2007, passed by the Additional District and Sessions Judge-Fast Track Court No.3, Coimbatore, in S.C.No.302 of 2006.

For appellants : Mr.R.John Sathyam

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

Challenge in this criminal appeal is to the conviction and sentence dated 26.09.2007 passed in Sessions Case No.302 of 2006 by the Additional District and Sessions Judge (Fast Track Court No.3), Coimbatore.

2. The case of the prosecution is that the second accused has received a sum of Rs.50,000/- by way of debt from the deceased, by name Rangasamy. The first accused is the wife of the second accused. On 28.4.2006, the deceased has approached the accused and demanded his money. But the accused

have threatened him and subsequently, a miff has arisen. The first accused has taken an iron rod and subsequently attacked on the head of the deceased and thereby caused injuries and on the way to hospital, he passed away. After occurrence, the wife of the deceased, by name, Kalavathy, as defacto complainant, has given a complaint and the same has been registered in Crime No.405 of 2006.

3. On receipt of the complaint, the investigating officer, viz., P.W.13, has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly Mrs.Meganasekar (P.W.8) has conducted postmortem and she found the following internal and external injuries.

External injuries: (1) Abrasions one Reddish brown in base are as follows:

- 1.0.75 X 0.75 cm at back of right elbow.
- 2.0.5 X 0.5 cm front of right lower neck
- 3.0.75 X 0.75 cm medial end of right clavicle
- 4.0.5 cm X .5 cm just above medial end of right clavicle
- 5.1.25 X .75 cm lateral aspect of right knee
6. 2 X 1 cm front of right upper leg
- 7.Double inverted 'C'shaped 3 X .5 cm, 2.5 X .25 cm over postero lateral.
- 8.Left upper neck. The distension between two abrasion is .5 cm. The wound is 3 cm below lateral to the left mastoid.
- 9.0.25 X 0.25 cm, 0.5 cm X 0.25 cm, 0.25 X 0.25 cm, over left back of elbow.
- 10.0.5 cm X 0.5 cm over dorsum of left middle finger
- 11.Curved liny abrasion over dorsum of left index finger.
12. 2 X 0.75 cm left dorsum of foot.

(2) Transversely oblique split laceration 3.25 X 0.5 cm X bone deep with surrounding contusion 0.5 cm seen over left upper forehead. The medial end of wound is continue as tailing abrasion about 3 cm. The lateral end of wound is 7 cm above lateraly from the lateral end of left eye-brow. The medial end of wound is 6.5 cm above medianly from medal end of left Eye brow.

(3) Contusion 2 X 0.75 cm near the lateral end of laceration, 5 X 4 cm over lateral aspect of Right upper 1/3rd arm.

Internal Injuries : Sub scalp contusion 4.5 cm X 3 cm over Right temporel region. 3 X 2 cm over left anterior frontal region of scalp. Hair line fracture transversely oblique in direction of 4 cm over left anterior frontal bone of vault, another hair line 5 cm over right temporal bone of vault subdural haemorrhage seen over both right and left temporo parietal region of brain. Subarachnoid haemorrhage involving left cerebral and right parieto temporal lobes of brain.

The postmortem certificate has been marked as Ex.P10.

4. The investigating officer, after completing investigation, has laid a final report on the file of the Judicial Magistrate No.I, Coimbatore and the same has been taken on file in P.R.C.No.13 of 2006.

5. The Judicial Magistrate No.I, Coimbatore, after considering the facts that the offences alleged to have been committed by both the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Coimbatore Division and the same has been taken on file in Sessions Case No.302 of 2006 and subsequently made over to the trial Court.

6. The trial Court, after hearing arguments of both sides and upon perusing the relevant documents, has framed first charge against both the accused under Section 506(ii) of the Indian Penal Code; second charge against them under Section 302 r/w. Section 34 of the Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

7. On the side of the prosecution, P.Ws.1 to 13 have been examined and Exhibits P.1 to P.20 and M.Os.1 to 9 have been marked.

8. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

9. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, has found both the accused guilty under Section 304(2) of the Indian Penal Code and sentenced them to undergo three years rigorous imprisonment and also imposed a fine of Rs.50,000/- upon each of them with usual default clause. Against the conviction and sentence passed by the trial Court, the present criminal appeal has been preferred, at the instance of the accused, as appellants.

10. The sum and substance of the case of the prosecution is that the second accused has borrowed a sum of Rs.50,000/- from the deceased and since the second accused has failed to discharge his liability, on the date of occurrence, the deceased, his wife and their daughter have met the accused and demanded their money and both the accused have threatened them and during the course of occurrence, the first accused has taken an iron rod and subsequently attacked on the person of the deceased and thereby caused fatal injuries and on the way to hospital, he succumbed to injuries.

11. The prosecution has set the law in motion only on the basis of Ex.P1, the complaint. The trial Court, by way of believing the averments made in Ex.P1 and the evidence given by the alleged eyewitnesses, namely, P.Ws.1 to 5, has come to a conclusion to the effect that both the accused have committed an offence punishable under Section 304(2) of the Indian Penal Code.

12. The learned counsel appearing for the appellants/accused has contended that one of the eyewitnesses, by name Manickavel, has been examined as P.W.3 and during the course of cross-examination, he would say that immediately after occurrence, some police officials have come to the place of occurrence and enquired as to how such occurrence has taken place and further in Ex.P1, the name of P.W.2 has not been mentioned and further, during the course of cross-examination, P.W.1 has stated in her evidence that during the course of occurrence, the deceased has fallen down from a dolmen and due to that he sustained injuries and further, the Doctor, who conducted autopsy on the body of the deceased, viz., P.W.8, has opined that the injuries sustained by the deceased would not be possible if he has had been attacked by an iron pipe and the trial Court, without considering the vital infirmities found on the side of the prosecution, has erroneously invited conviction and sentence against the appellants/accused and therefore, the conviction and sentence passed by the trial Court are liable to be set aside.

13. In order to sustain the conviction and sentence passed by the trial Court, the learned Additional Public Prosecutor has contended that in the instant case, even in Ex.P1 it has been clearly stated about the details of occurrence as well as attack made by the first accused on the person of the deceased. In fact, the materials found in Ex.P1 have been clearly corroborated by eyewitnesses, namely, PWs.1 to 5 and their evidence have been clearly corroborated by medical evidence by way of examining P.W.8 and the trial Court, after considering the replete evidence available on the side of the prosecution, has rightly invited conviction and sentence against the appellants/accused under Section 304(2) of the Indian Penal Code and further, the trial Court has taken lenient view in awarding sentence. Under the said circumstances, the conviction and sentence passed by the trial Court do not warrant interference.

14. The consistent case put forth on the side of the prosecution is that in the place of occurrence, the first accused has taken an iron pipe and subsequently attacked on the head of the deceased and thereby caused fatal injuries.

15. On the side of the prosecution, the alleged eyewitnesses have been examined as P.Ws.1 to 5 and all of them have consistently stated in their evidence that in the place of occurrence, the first accused has taken an iron pipe and attacked on the head of the deceased. Since P.Ws.1 to 5 have given cogent/trustworthy evidence with regard to details of overt acts alleged to have been committed by both the accused, the Court can very well come to a conclusion that the occurrence has taken place, as put forth on the side of the prosecution.

16. It is true that during the course of cross-examination, P.W.3 has clearly admitted to the effect that after occurrence, some police officials have come to the place of occurrence. Except that piece of evidence, P.W.3 has not stated anything further. Further, P.W.1 has stated in her evidence during the course of cross-examination that during the course of occurrence her husband has fallen down from a dolmen. Further in Ex.P1, the name of P.W.2 has not been mentioned. Simply because P.Ws.1 and 3 have deposed evidence as noted down earlier and simply because, the name of P.W.2 has not been mentioned in Ex.P1, the Court cannot come to a conclusion to the effect that the occurrence has not taken place as alleged on the side of the prosecution.

17. It is true that P.W.8, the Doctor, who conducted autopsy, has given such kind of opinion as pointed out on the side of the appellants/accused. It is nothing but an opinion and the same is not a conclusive piece of evidence. Further, P.W.8 has opined that the death has caused due to head injuries.

In fact, on the side of the prosecution, enormous evidence is available with regard to overt acts alleged to have been committed by both the accused on the person of the deceased. Since on the side of the prosecution, replete evidence is available with regard to details of occurrence and also the overt acts alleged to have been committed by both accused on the person of the deceased, it is needless to say that the contentions put forth on the side of the appellants/accused cannot be accepted.

18. The trial Court, after considering the overwhelming evidence available on record, has rightly invited conviction and sentence against the appellants/accused. In view of the foregoing elucidation of factual aspects, this Court has not found any error or illegality in the conviction and sentence passed by the trial Court and altogether, the present criminal appeal is liable to be dismissed.

In fine, this criminal appeal is dismissed. The conviction and sentence passed by the trial Court in Sessions Case No.302 of 2006, are confirmed. If the appellants/accused are not in duress, the trial court is directed to immure them.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msk

To :

- 1.The Additional District and Sessions Judge-
Fast Track Court No.3, Coimbatore
2. The Inspector of Police,
Thudiyalur Police Station.
- 3.The Public Prosecutor, High Court, Madras.
4. The Superintendent, Central Prison, Coimbatore.
+1 cc to M/s.R.John Sathyam, Advocate,SR.3604 (4/5/16)

CrI.A.No.939 of 2007

GJ(CO)
EU 27.1.16