

Bail Slip:- The Appellant/ Petitioner viz., C. Selvakumar aged 39 years S/o. Chattiappan was directed to be released on bail as per order dated 9.7.2015 made in M.P.No.1 of 2015 in CrI.A.No.786 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 23.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.786 of 2013

Selvakumar ... Appellant/ sole Accused

vs.

State, by
The Inspector of Police,
Tholasampatti Police Station,
Salem District.

(Crime No.44 of 2006) ... Respondent / Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 24.09.2013 passed by the learned III Additional District and Sessions Judge, Salem, in S.C.No.32 of 2012.

For Appellant : Mr.B.Vasudevan

For Respondent : Mr.M.Maharaja, Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by V.Bharathidasan, J.)

The appellant in this appeal is the sole accused in Sessions Case No.32 of 2012, on the file of the learned III Additional District and Sessions Judge, Salem. He stood charged for offences under Sections 341, 302 and 309 of IPC. The Trial Court, by judgement dated 24.09.2013, convicted the appellant/accused under Sections 341, 302 and 309 of IPC, and sentenced him to undergo simple imprisonment for one month under Section 341 of IPC, and sentenced him to undergo life imprisonment and also imposed a fine of Rs.600/-, in default, to undergo rigorous imprisonment for three months for the offence under Section 302 of IPC, and sentenced him to undergo simple imprisonment for one year for the offence under Section 309 of IPC. All the sentences were ordered to run concurrently. Challenging the above said conviction and

sentence, the appellant/accused is before this Court with this appeal.

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

(i) Deceased in this case one Chandra was the wife of P.W.2. The accused had illicit intimacy with the deceased. P.W.2 after came to know about the same, warned the deceased. Hence, the deceased stopped meeting the accused. On 29.06.2006, the deceased and P.W.1 went for agricultural collie work in the field owned by P.W.5 and after completing the work, when they were returning home, at about 3.00 p.m., the accused waylaid the deceased and attacked her with knife and caused her death. Thereafter, he cut his throat with the knife and fell down. Immediately, P.Ws.1 and 4 went to the police station, where, P.W.1 gave a complaint before the respondent police.

(ii) P.W.19, Sub Inspector of Police, Tholasampatti Police Station, on receipt of the complaint, registered a case in Crime No.44 of 2006 for the offence under Sections 302 and 309 of IPC and prepared first information report Ex.P16 and sent the same to the Judicial Magistrate Court through P.W.11 Head constable, namely, Natarajan and copies of the same to the higher officials. In the meantime, the accused was taken to Mohan Kumaramangalam Medical College Hospital, Salem. P.W.17, Doctor, working in Mohan Kumaramangalam Medical College Hospital, Salem, admitted the accused in the hospital and gave treatment.

(iii) P.W.20, Inspector of Police, working in Tholasampatti Police Station, after receipt of the first information report, commenced the investigation. He visited the scene of occurrence and prepared Observation Mahazar Ex.P3, drew a Rough Sketch Ex.P18, in the presence of witnesses. He arranged a photographer for taking photos of the dead body. He conducted inquest over the dead body in the presence of panchayatars between 5.30 p.m and 8.00 p.m, at the scene of occurrence and prepared Inquest Report Ex.P19. Thereafter, he sent the dead body to Mohan Kumaramangalam Medical College Hospital, Salem, for postmortem. He seized M.O.1, knife, M.O.5, Nylan Chappel belonged to the deceased, M.O.6 Rexin Chappel one pair belonged to the accused, M.O.7, bloodstained soil and M.O.8 sample soil from the place of occurrence under Ex.P4 Seizure Mahazar, attested by witnesses.

(iv) P.W.14, Doctor, working in Mohan Kumaramangalam Medical College Hospital, Salem, on 30.06.2006 at about 10.10 a.m., conducted postmortem on the dead body and found the following injuries.

External Injuries: (1) An oblique gaping stab injury on right deltoid region 5 x 2 cms bone deep with cut fracture of upper 3rd right humerus bone. (2) An oblique gaping stab injury posterior aspects of Rt. arm 7x4x2 cms. (3) An oblique gaping stab injury on middle of Rt. arm 3x2x1 cms. (4) Incised injury on Rt. chest wall 4x1x0.5 cms. (5) 1.5 cms below the previous injury, gaping stab injury on Rt.

chest 4.5x1 cms cavity deep. (6) 1 cm below the previous injury on Rt. chest wall 4x0.5x0.5 cms. (7) An oblique gaping cut injury on inner aspect of Lt. fore arm 8x3 cms bone deep muscle exposed out. (8) 3 cms above the previous injury, oblique gaping stab injury Lt. forearm 4.5x1.5 bone deep. (9) An oblique gaping cut injury 5cms below the Lt. elbow 6x2 cms bone deep (10) An oblique gaping cut injury outer aspect of Lt. fore arm 4x1 cms bone deep. (11) An oblique gaping cut injury on Lt. forearm 4x1 cms bone deep. (12) An oblique gaping cut injury on Lt. arm 5x2 cms bone deep (13) An oblique gaping cut injury on back of Lt. arm 5x2 cms deep. (14) An oblique gaping stab injury Lt. scapular region 3x1 cms with cut fracture of Lt. scapular bone. (15) 2.5 cms below the previous injury oblique gaping stab injury on Lt. scapular region 4x1 cms bone deep. (16) 4 cms below the previous injury gaping stab injury on Lt. scapular region 4x0.5 cms bone deep. (17) An oblique gaping cut injury back of Rt. Loin 8x3x1 cms. (18) An oblique gaping cut injury lower part of Rt. thigh 6x2 cms bone deep.

INTERNAL INJURIES: (1) Ext-Injuries No (5) on dissection 5th rib complete cut fracture stab injury on Rt. lung of middle lobe 4.3x0.5 cms cavity deep through and through seen emerging through the middle aspects of Rt. lung thoracic cavity 250 cc of fluid blood with clots (2) Ext-Injury No (6) on dissection cut fracture of xiphi sternum

He opined that the deceased would appear to have died of shock and haemorrhage due to multiple cut and stab injuries. He issued Postmortem Certificate Ex.P6.

(v) P.W.20, continued the investigation. Since the accused was admitted in the hospital in an unconscious stage, he could not arrest him. After discharge from the hospital on 07.08.2006, he arrested the accused. Since the accused was not in a position to speak, he did not obtain any statement. On 08.08.2006, he produced P.W.1 before the learned Judicial Magistrate No.I, Salem, where, the learned Judicial Magistrate recorded his statement under Section 164 Cr.P.C. Thereafter, P.W.20 examined the Doctor, who conducted postmortem and other witnesses and recorded their statements. After completion of investigation, P.W.20 laid charge sheet against the accused before the concerned Judicial Magistrate Court.

charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 20 witnesses were examined and 21 documents and 8 material objects were marked.

4. Out of the above witnesses, P.W.1 is an eye witness to the occurrence. She was working along with the deceased before the occurrence. According to her, on 29.06.2006, after completing their work, she and the deceased were returning home and at that time, the accused waylaid the deceased and attacked her with knife and caused her death, and then he also cut his throat with the same knife. It is her further evidence that immediately, the accused was taken to the Government Hospital, Salem, and she and P.W.4 went to the police station, where, she gave a complaint before the respondent police, which is marked as Ex.P1. P.W.2 is the husband of the deceased. He has spoken about the illicit intimacy between the accused and the deceased. He has spoken that after he came to know about the same, he warned the deceased and on the date of occurrence, after hearing the news, he went to the scene of occurrence and saw the deceased found dead. P.W.3 is the brother of the deceased. She has stated that after hearing the news, he reached the scene of occurrence and saw the deceased found dead. P.W.4 is the uncle of the deceased. He has stated that he saw the deceased and the accused with cut injuries and he, along with P.W.1, went to the police station and given the complaint to the respondent police. P.W.5 is the owner of agricultural field, where, P.W.1 and the deceased were working before the occurrence. According to him, after completing the work, P.W.1 and the deceased left for home at about 2.30 p.m. P.W.6 is the father of the deceased. P.W.7 is the mother of the deceased. They have stated that he saw the dead body of the deceased after the occurrence. P.W.8 is a relative of the accused. It is his evidence that he saw the dead body of the deceased and the accused with cut injuries at the scene of occurrence and he took the accused to the Government Hospital. P.W.9 was residing at Elavamarathur and he has stated that he saw the dead body of the deceased and the accused with cut injuries in the scene of occurrence. P.W.10, has stated that after the occurrence, on hearing the news, he reached the scene of occurrence and saw both the deceased and the accused with injuries. P.W.11 is a Head Constable, who submitted the FIR to the Judicial Magistrate Court. P.W.12 is another Head Constable, who accompanied the dead body to the Government Hospital and identified the dead body for postmortem. P.W.13 is the Village Administrative Officer. He is a Mahazar witness to the recovery of material objects 1,5,6 and 8 under Ex.P4 seizure mahazar. P.W.14, Doctor, working in the Government Hospital, conducted post mortem on the dead body and issued postmortem certificate Ex.P6. P.W.15 is the Doctor, who gave treatment to the accused in the Government Hospital, Salem. P.W.16 is the learned Judicial Magistrate No.I, Salem, who recorded the statement of P.W.1 under Section 164 Cr.P.C. P.W.17 is the Doctor, who admitted the accused and issued

Accident Register Ex.P12. P.W.18 is the Head Clerk working in the Judicial Magistrate Court No.I, Salem and he sent the material objects to the Forensic Department for chemical examination. P.W.19, Sub Inspector of Police has deposed that on receipt of the complaint, he registered a case in Crime No.44 of 2006 for the offence under Section 302 and 309 of IPC. P.W.20 is the Investigating Officer who investigated the case, arrested the accused, recovered the material objects, examined the witnesses and recorded their statements and on completion of investigation he filed charge sheet before the Judicial Magistrate Court.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. He did not examine any witness nor marked any documents, but he filed a statement, stating that while he was sleeping in his house, some unknown persons pushed him down and cut his throat when he was trying to defend it.

6. Having considered all the above materials, the Trial Court convicted and sentenced the accused for the offences as stated in the first paragraph of this judgement. Challenging the above conviction and sentence, the accused is before this Court.

7. We have heard Mr.B.Vasudevan, learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. The learned counsel appearing for the appellant would submit that P.W.1, claimed to be eye witness to the occurrence, accounted for only one injury, where as, in the postmortem report, as many as 18 injuries were found on the body of the deceased and hence her evidence creates doubt regarding the presence of P.W.1 in the scene of occurrence. According to him, Except the evidence of P.W.1, there is no other evidence available to prove the guilt of the accused. He further submitted that the accused was attacked by some unknown persons in his house and sustained injury and to that effect he has also filed a statement at the time of questioning under Section 313 Cr.P.C. Hence, he prays for allowing the appeal.

9. Per contra, the learned Additional Public Prosecutor would submit that P.W.1 is an eye witness to the occurrence and before the occurrence, the deceased and P.W.1 were working together in the agricultural field owned by P.W.5 and after completing the work, while they were returning home, the accused waylaid the deceased and attacked her with knife and thereafter he himself cut his throat with knife. He further submitted that the evidence also available regarding the motive also. Hence, he prays for dismissal of this appeal.

10. P.W.1 is an eye witness to the occurrence. P.W.1 and the deceased are agricultural coolies. In her evidence that both of them working in the agricultural field owned by P.W.5 and after completing the work, they left for home at 2.30 p.m., The evidence of P.W.1 is corroborated by the evidence of P.W.5, the land owner, he has stated that on the date of occurrence both the deceased and P.W.1 were working in his field. According to P.W.1, after completing the work, when she, along with the deceased was returning home, the accused waylaid the deceased and attacked her with knife and he himself cut his throat with the same knife. P.W.1 has clearly spoke about the occurrence, and her presence in the scene of occurrence also natural. Hence, we have no reason to disbelieve the evidence of P.W.1. Regarding the defence of the accused that he was attacked by unknown persons in his house can not be believed, because, P.Ws.1,3,4 and 8, have seen the dead body of the deceased and the accused with cut injuries in the scene of occurrence. P.W.8 is related to the accused and in his evidence has stated that he only took the accused and admitted him in the Government Hospital, Salem. His evidence was that he saw the dead body of the deceased and the accused with cut injuries in the scene of occurrence. Hence, it is the consistent evidence that the accused was found near the dead body of the deceased with injury. Hence, we are not prepared to accept the defence story, but it is one of the added circumstances against the accused. In the above circumstances, we hold that the trial Court was right in convicting the accused and we find no reason to interfere with the judgment of the trial Court. Hence, the appeal fails and the same is liable to be dismissed.

11. In fine, this appeal is dismissed. The conviction and sentence passed in S.C.No.32 of 2012 by the learned III Additional District and Sessions Judge, Salem, stands confirmed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1.The III Additional District and Sessions Judge,
Salem.

2. do thro the Principal Sessions Judge
Salem

3. The Judicial Magistrate, Omalur

4. The Chief Judicial Magistrate
Salem

5. The Superintendent
Central Prison, Salem

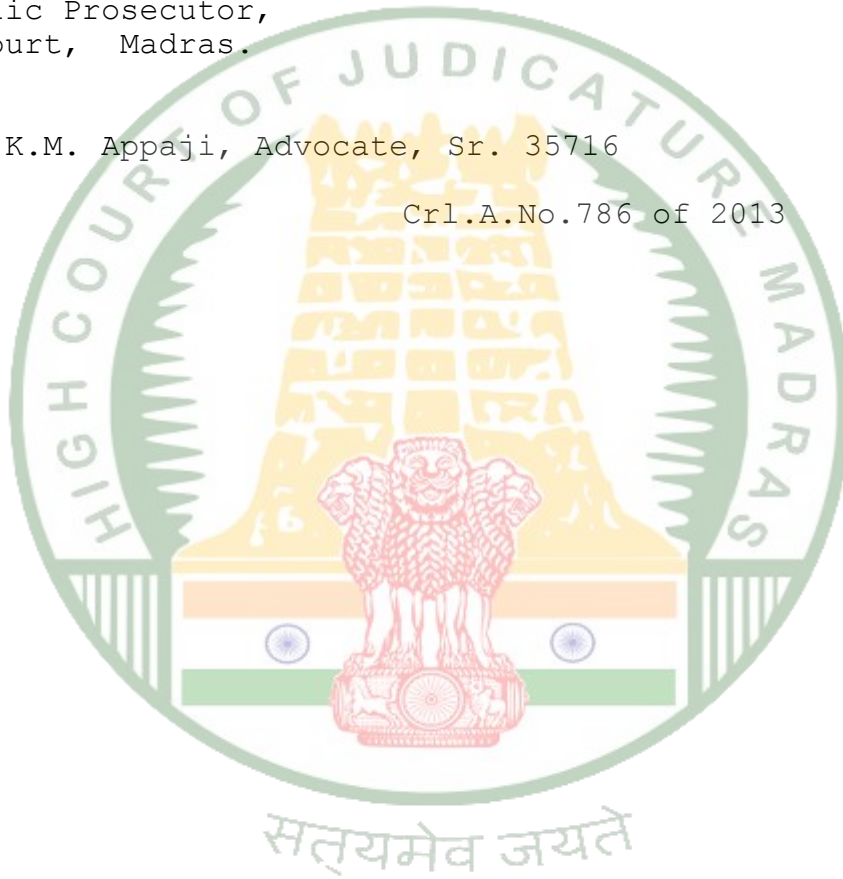
6.The Inspector of Police,
Tholasampatti Police Station,
Salem District.

7.The Public Prosecutor,
High Court, Madras.

1 cc Mr.C.K.M. Appaji, Advocate, Sr. 35716

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