



Bail Slip

That the Appellant/Accused namely Maruthu S/O.Savuthaiya, was directed to be released on Bail as per the order of this Court dated 28/03/2013 made in M.P.No.1/2013 in Crl Appeal No.91/2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.91/2013

Maruthu .. Appellant/sole accused

Vs

The State by
The Inspector of Police,
Thudiyalur Police Station,
Thudiyalur,
Coimbatore District.

.. Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore, dated 09.04.2010 in S.C.No.150 of 2009.

For Appellant : Mr.R.Ganeshkumar

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

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.150 of 2009 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore. He stood charged for an offence under Section 302 of IPC by judgment dated 09.04.2010. The trial court convicted him under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine



of Rs.2,000/-, in default, to undergo rigorous imprisonment for one year. Challenging the said conviction and sentence, the appellant/sole accused is before this Court with this appeal.

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

(a) The deceased in this case was one Mrs. Balamani. She was already married, having a female child. Deserting her husband, the deceased had come to Mangarai Village where she was working in a brick kiln run by one K. Velusamy-P.W.1. The accused, who was already married, was also working in the same brick kiln. In course of time, the accused had developed illicit intimacy with the deceased. After some time, the deceased and the accused started living together in a quarters allotted to them by P.W.1. The accused was in the habit of taking liquors and to scold the deceased and also to beat her on many occasions in drunken state. The deceased was not able to bear the torture. Therefore, she went back to her native place, namely, Anaikatty village.

(b) On 02.05.2009, from Anaikatty Village, in a bus, she came down to Mangarai Village to do coolie work in the above brick kiln. When she got down from the bus at Mangarai Sukku Coffee Shop bus stop, the accused was waiting there for her. He developed quarrel with her at that place. P.W.1 saw the accused and the deceased quarreling near the bus stop and he shouted at them and wanted them to go to the Brick kiln to do their work. Thereafter, it is alleged that the accused took the deceased to a lonely place which belongs to P.W.2 and cut the deceased indiscriminately with a knife. The deceased died on the spot. Leaving the dead body of the deceased, it is stated that the accused absconded from the place of occurrence. At about 9.00 p.m. on the same day, P.W.2, the owner of the land found the dead body of the deceased lying with injuries. He immediately informed the same to P.W.1.

(c) P.W.1 thereafter, went to Thudiyalur Police Station and made a complaint at 11.30 p.m. on 02.05.2009. P.W.14, the then Sub-Inspector of Police, on receipt of the said complaint under Ex.P.1, registered a case in Crime No.891 of 2009 for an offence under Section 302 of IPC against the accused. Ex.P.13 is the First Information Report. He forwarded both the documents to court which were received by the learned Judicial Magistrate No.I, Coimbatore, at 5.00 p.m. on 03.05.2009.

(d) P.W.15 took up the case for investigation. He proceeded to the place of occurrence at 6.30 p.m. and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.7 and another witness. He recovered blood stained earth and sample earth from the place of occurrence under a Mahazar. He conducted inquest on the dead body of the deceased on 03.05.2009



between 7.30 a.m. and 10.00 a.m. and then forwarded the body for postmortem.

(e) P.W.8 Dr.J.Jeya Singh conducted autopsy on the body of the deceased on 03.05.2009 at 12.00 noon. He found the following injuries:

'1. A gapping transverse cut wound measuring 9 x 5cms exposing underlying partially cut cervical vertebra seen on front and sides of neck at the level of adenoids cartilage. Underlying muscles vessels nerves and other neck tissues found clean cut up to C5 vertebra which was also found cut to a depth of 0.25 cms.;

2. A vertically oblique stab wound on the left side front of chest 5 x 2cms entering into left thoracic cavity through 3rd inter costal space. The lower pointed inner end is 1cms left to mid line and upper blunt outer end is 9 cms below and inner to middle of left clavicle. The wound passes backwards, inwards and downwards and has entered the pericardium 3 x 0.5cms and lateral wall of left ventricle 3 x 0.5cms and has ended entering into cavity of left ventricle. Pericardial sac contains about 200gms of blood clots. The depth of the wound tract is about 8 cms. The margins of the wound are clean cut;

3. A vertically oblique stab wound on the left side lateral aspect of chest 3 x 2 cms entering into left thoracic cavity through 3rd inter costal space along the mid axillary line. The lower pointed posterior end is in the mid axillary line, and the upper outer blunt end is 8 cms posterior to mid axillary line. The wound passes backwards, inwards and downwards entering into left pleural cavity and has caused a stab in the lower lobe of left lung 3 x 1 x 2cms, the deepest part ending as a point. Left pleural cavity contains about 250 ml of blood with clots. The depth of the wound tract is about 12cms. The margins of the wound are clean cut; and

4. A transversely oblique stab wound on the back of left lower chest 3 x 2 cms entering into cavity at the level of T8 vertebra. The wound passes obliquely forwards, upwards and inwards piercing the left perinephric region and has caused a stab in the inferior aspect of left lobe of liver 2 x 0.5 x 1 cms the deepest part ending as a point. Peritoneal cavity contains about 400ml of blood. The depth of the wound tract is about 16cms. The margins of the wound are clean cut.



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Other Findings:-

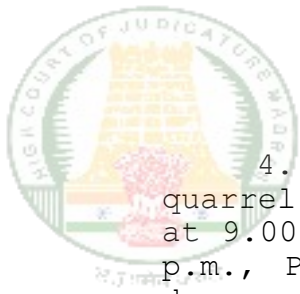
- Peritoneal cavity - empty;
- Heart: all chambers - empty and described in injury column-coronaries patent;
- Hyoid bone intact;
- Stomach contains about 20ml of mucosal fluid, no specific smell, and mucosa pale;
- Small intestine: contains 20ml of bile stained fluid, no specific smell, mucosa pale;
- Brain, Lung, Liver, Spleen and Kidneys cut section pale ; and
- Urinary bladder empty. Uterus normal, cut section empty.''

Ex.P.7 is the Postmortem Certificate. He opined that the said injuries on the body of the deceased would have been caused by a knife. According to him, the death would have occurred 12 to 24 hours prior to the postmortem. He also opined that the death was due to shock and hemorrhage due to the injuries.

(f) P.W.15 continued the investigation. While so, on 04.05.2009, it is alleged that the accused appeared before P.W.6 at 3.00 p.m. He wanted to confess before him about the above occurrence. P.W.6 reduced the said confession statement of the accused into writing vide Ex.P.2. Along with a report under Ex.P.3, P.W.6 produced the accused before P.W.15 at 4.00 p.m. on 04.05.2009. On production of the accused before P.W.15 by P.W.6, P.W.15 arrested him and on such arrest, the accused gave a voluntary confession in the presence of P.W.6 and another witness in which he disclosed the place where he had hidden the knife and also a blood stained white colour shirt and dhoti. In pursuance of the same, at 5.00 p.m. on the same day, he took the police and the witnesses to the place of hide out and produced the material objects (M.Os.5 to 7). Then, he forwarded the accused to court for judicial remand and handed over the material objects to court.

(g) The clothing on the dead body of the deceased were also recovered and they were also sent to court. At his request, the above material objects were sent for chemical examination. The report revealed that there were blood stains on all the material objects including the knife. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed a charge as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined and 17 documents and 20 material objects were also marked.



4. Out of the said witnesses, P.W.1 has spoken about the quarrel between the accused and the deceased near the bus stop at 9.00 a.m. on 02.05.2009. He has further stated that at 09.00 p.m., P.W.2 informed him over phone that the dead body of the deceased was lying in the field with injuries. He has spoken about the complaint given by him to the police. P.W.1 is the owner of the land where the dead body of the deceased was found. He has stated that at about 11.30 a.m., when he was walking in his field, he found the accused and the deceased sitting together. He has further stated that at 9.00 p.m., when he returned to his field, he found the dead body of the deceased and then he informed the same to P.W.1.

5. P.W.3 is the father of the deceased who has stated that the deceased was living with the accused and the deceased had earlier informed him that the accused was beating her frequently. P.W.4 is the son-in-law of P.W.3. He has also spoken about the alleged relationship between the accused and the deceased. P.W.5 has stated that she was running a Provisional Shop near Mangarai Bus Stop. He has stated that at 9.00 a.m. on the day of occurrence, he found the accused and the deceased quarreling. P.W.6 has spoken about the extra judicial confession said to have been given by the accused to him. P.W.7 has spoken about the preparation of an Observation Mahazar and a Rough Sketch and the recovery of the material objects from the accused. P.W.8 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.9, the learned Judicial Magistrate has stated that he recorded the statements of P.W.1 and P.W.2 under Section 164 of Cr.P.C. P.W.10 has stated that on the arrest of the accused, he gave a confession in which he disclosed the place where he had hidden the knife and the same was later on produced by the accused in the presence of the witnesses. P.W.11 was an employee in the Brick kiln. He has spoken that the accused and the deceased used to quarrel frequently. P.W.12 has spoken about the photographs taken at the place of occurrence at the request of P.W.15. P.W.13 has spoken that he took the dead body of the deceased to the hospital for postmortem as directed by P.W.14. P.W.14 has spoken about the registration of the case. P.W.15 has spoken about the investigation done and the filing of the charge sheet.

6. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. On his side, he has examined one P.K.Rajan, the Sub-Inspector of Police as D.W.1 through whom he has marked Ex.D.1 and Ex.D.2.

7. D.W.1 has stated that on an earlier occasion, the husband of the deceased had attacked the deceased with knife in connection with which a case in Cr.No.43 of 2008 for the



offences under Sections 324 and 498-A of IPC was registered on the file of Solaiyur Police Station on 03.07.2008. He has further stated that Ex.D.2 is the Accident Register pertaining to the injuries sustained by the deceased for the injuries caused by her husband. He has further stated that she had taken treatment between 03.07.2008 and 12.07.2008 as inpatient in Government Hospital, Attappadi.

8. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

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

10. This is a case based on circumstantial evidence. The first and foremost circumstance relied on by the prosecution is that the accused and the deceased were working together in the brick kiln, owned by P.W.2 and there were also frequent quarrels between them. In our considered view, from the evidence of P.W.1 and that of P.W.11 the said fact has been proved.

11. The next circumstance relied on by the prosecution is that on the day of occurrence at 9.00 a.m., the deceased came in a bus and got down at Mangarai Sukku Coffee Shop Bus Stop. It is the further case of the prosecution that the accused was waiting there and there were quarrels between him and the deceased. It has been spoken by P.W.1 as well as the shop owner, namely, P.W.5. Thus, the deceased was lastly seen at 9.00 a.m. near the bus stop in the company of the accused. It is in the evidence of P.W.1 that he warned the accused and the deceased not to quarrel and to go to the brick kiln to do the work. Therefore, there is no evidence about the further movement of the accused and the deceased after 9.00 a.m.

12. The next circumstance relied on by the prosecution is that on the day of occurrence at about 11.30 a.m., P.W.2 found the accused and the deceased sitting in his field. But it is seen from the records that after having seen the accused and the deceased, he did not tell P.W.1 that he saw the accused and the deceased sitting in his field at 11.30 a.m. Thus, the evidence of P.W.2 that the deceased and the accused found together in his field cannot be believed. Thus, we hold that this circumstance has not been proved by the prosecution.

13. Thereafter, the dead body of the deceased was found at 9.00 p.m. in the field of P.W.2. On information given by P.W.2,



P.W.1 went to the police station and laid the complaint. Thereafter, it is alleged that during the course of investigation, the accused went to P.W.6 and made a voluntary confession. In our considered view, it is too difficult to believe the said facts spoken by P.W.6. P.W.6 is a stranger to the accused. Thus, there was no reason for the accused to repose confidence on him and to make a confession. Therefore, we find it difficult to give any weightage to the said extra-judicial confession as we have got every doubt about the same. The extra judicial confession by its very nature, is a very weak piece of evidence. Unless the extra-judicial confession inspires the confidence of the court, as a rule of prudence, the court should expect corroboration from any other independent source on material particulars. Here, in this case, there is absolutely no other evidence to corroborate the so called evidence of P.W.6. As we have already pointed out, the prosecution should also rule out any hypothesis which would be inconsistent with the guilt of the accused.

14. Here in this case, it is in evidence that on 03.07.2008, the husband of the deceased had stabbed the deceased with knife. In respect of the same, a case was registered in Cr.No.43 of 2008 on the file of the Solaiyur Police Station against her husband for the offences under Sections 324 and 498-A of IPC and he was arrested and later on released on bail. Ex.D.1 is the First Information Report and Ex.D.2 is the Accident Register showing the injuries sustained by the deceased. Thus, the possibility of the husband of the deceased or somebody else committing the murder of the deceased has not been ruled out. There was no investigation done to rule out the said possibility. In view of the above discussion, we hold that the prosecution has failed to prove the case beyond reasonable doubts. Therefore, in our considered view, the accused is entitled for acquittal.

15. In the result, the appeal stands allowed and the appellant/sole accused is acquitted. The bail bond, if any, executed by him shall stand discharged. The fine amount, if any, paid, shall be refunded to the accused;

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar



To

1. The Judicial Magistrate No.I,
Coimbatore.
2. The Chief Judicial Magistrate,
Coimbatore (for Information).
3. The Additional District and Sessions Judge,
Fast Track Court No.I, Coimbatore.
4. The Superintendent,
Central Prison,
Coimbatore.
5. The Public Prosecutor,
High Court, Chennai.
6. The Inspector of Police,
Thudiyalur Police Station,
Thudiyalur, Coimbatore District.

+2cc to Mr.A.D.Jagadish Chandira, Advocate Sr.15431,15161

Crl.A.No.91/2013

svi[co]
srg 12/04/2016