

**BAIL SLIP**

This Appellant /Sole Accused Eugene Jose S/O Vincent male was directed to be released on bail order of this court dated 18.08.2015 and made in MP(MD)No.2/2015 in Cr1.A.(MD)No.127/15.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED :30.09.2016****CORAM****THE HONOURABLE MR.JUSTICE S.NAGAMUTHU****AND****THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN****CRL.A (MD)No.127 of 2015**

Eugene Jose

.. Appellant

vs.

State rep. by
the Inspector of Police
Colachel Police Station
Kanyakumari District
Crime No.95/2011

.. Respondent

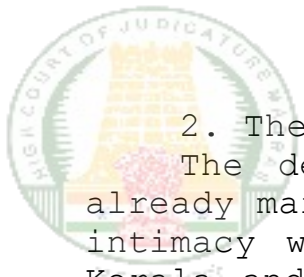
PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the Mahalir Neethimandram, Nagercoil, Kanyakumari District, in S.C.No.114 of 2012 dated 31.03.2015.

For Appellant : Mr.V.Kathirvelu
Senior Counsel for
Mr.K.Prabhu

For Respondents : Mr.K.S.Duraipandian
Additional Public Prosecutor

JUDGMENT**(JUDGMENT OF THE COURT WAS DELIVERED BY S.NAGAMUTHU, J)**

The appellant is the sole accused in S.C.No.114/2012 on the file of the Mahila Fast Track Sessions Court, Nagercoil, Kanyakumari District. He stood charged for the offences under Sections 364, 211, 302 and 201 IPC. By judgment dated 31.03.2015, the trial Court convicted him only under Section 302 IPC and acquitted him from the other charges. The trial Court sentenced him to undergo imprisonment for life and to pay a fine of Rs.50,000/-, in default, to undergo rigorous imprisonment for two years for the offence under Section 302 IPC. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.



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

The deceased in this case was one Mrs. Poongodi. She was already married to one Murugan. But the accused developed illicit intimacy with Mrs. Poongodi. It is alleged that he took her to Kerala and lived with her for quite some time. Thereafter, the accused took the deceased back to Kollanvilai Patharai Village. The deceased and the accused were living together for some time. While so, it is alleged that there was a domestic quarrel between the accused and the deceased. In the said quarrel, the accused took out a coconut patiole and attacked her with the same and also pushed her down, stamped her with legs. The occurrence was witnessed by P.Ws. 2 and 3. She was taken to a private hospital by name Sri Padmanabha Hospital at Colachal in Kanyakumari District by one Mrs. Reethammal. The deceased was then conscious. She told the Doctor that she had fallen from a motorcycle and sustained injuries. She was admitted as inpatient. While she was undergoing treatment in the said hospital, on 26.03.2011, around 5 a.m., she went for shock, her pulse became feeble and blood pressure got raised. In spite of medical treatment, the deceased died due to Cardio Respiratory failure.

2.1. After the death of the deceased, P.W.1 - the Vice President of the Village made a complaint at Colachal Police Station on 26.03.2011 at 12 noon. In that complaint, he alleged that the deceased was attacked by the accused and he was the cause for the death. Therefore, the present case was registered in Crime No.95 of 2011 under Section 302 against the accused. Ex.P1 is the complaint. Ex.P6 is the FIR.

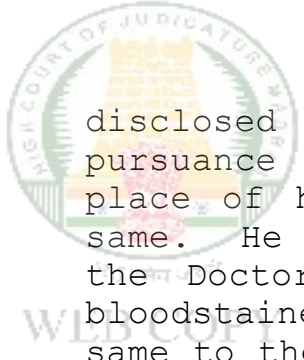
2.2. P.W.14 took up the case for investigation. He went to the place of occurrence, prepared observation mahazar and rough sketch at the place of occurrence in the presence of witnesses. On the same day, between 3.30 and 5.30 p.m., he conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.3. P.W.6 - Dr. Velmurugan conducted autopsy on the body of the deceased on 27.03.2011 at 12 noon. He found the following injuries:

1. 5 x 3 cm abrasion seen over the bridge of the nose.
2. 6 x 4 cm abrasion over the front of neck.
3. 7 x 2 cm abrasion seen over the middle of outer aspect of left fore arm.
4. 6 x 4 cm abrasion seen over the outer aspect of middle of left side of chest.

All the above said injuries are reddish in colour. He gave opinion that the death was due to shock and hemorrhage due to the multiple injuries found on the body of the deceased.

<https://hcservices.courts.gov.in/hcservices/>, during the course of investigation, arrested the accused on 27.03.2011 at 7 a.m., in the presence of witnesses. On such arrest, he made a voluntary confession, in which, he



disclosed the place, where he had hidden the coconut patiole. In pursuance of the same, he took the police and witnesses to the place of hide out and produced the same. P.W.14 recovered the same. He forwarded the accused for judicial remand. He examined the Doctor and recorded his statement. P.W.14 recovered the bloodstained cloth from the body of the deceased and forwarded the same to the Court. At his request, the material objects were sent for chemical examination. The report revealed that there was no human blood detected in any of the material objects. On completing the investigation, he laid charge sheet against the accused.

2.5. Based on the above materials, the trial Court framed charges under Sections 364, 211, 302 and 201 IPC against the accused. He denied the same. In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined, 15 documents were exhibited and 4 material objects were marked.

2.6. Out of the said witnesses, P.W.1 is the Village Vice President. He has stated that he witnessed the occurrence on 24.03.2011, around 12 noon. According to him, when he was at his house, he heard a cry from the house of the accused. When he went there, he found the accused attacked the deceased with patiole. He also stamped the deceased with his legs, after the deceased fallen down. He has further stated that the deceased died on 26.03.2011. Thereafter, he went to the police station and made a complaint. P.Ws.2 and 3 are the residence of the same village. They have also stated that when they were passing through the house of the accused, they found the accused beating the deceased with the coconut patiole. They have further stated that the accused stamped the deceased with legs and thereafter ran away from the scene of occurrence. P.W.4 has spoken about the preparation of observation mahazar and rough sketch at the place of occurrence. P.W.5 has stated that he heard the occurrence later. P.W.6 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.7 has spoken about the registration of the case on the complaint of P.W.1 on 26.03.2011 at 12 noon. P.W.8 - Dr.Senthilkumar has stated that when he was on duty at Sri Padmanabha Hospital at Kulachal, which is a private hospital on 25.03.2011, at 11 a.m., the deceased was brought by one Reethammal. The deceased was fully conscious. She told the Doctor that on 24.03.2011, at 5 p.m., when she was at her house, she fell down from the motorcycle and sustained injuries. She complained of abdominal pain. P.W.8 admitted her as inpatient in the said hospital. According to him, at 4 a.m., on 26.03.2011, the deceased was conscious, talking and then, she went for shock and died. P.W.9 has stated that he took the deadbody to Doctor and handed over the same for postmortem. P.W.10 has stated that he went to the place of occurrence for recovery of the coconut patiole. P.W.11 has stated that he handed over the FIR to the learned Judicial Magistrate at 3.30 p.m., on 26.03.2011. P.W.12 has spoken about



the preparation of observation mahazar and rough sketch. P.W.13 has spoken about the arrest of the accused and the consequential recovery of the material objects. P.W.14 has spoken about the investigation done and the final report filed.

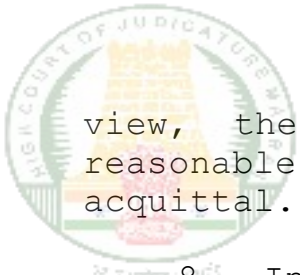
3. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witnesses nor marked any documents on his side. His defence was a total denial. Having considered all the above, the trial Court convicted him under both the charges. That is how, he is before this Court with this appeal.

4. We have heard the learned senior counsel for the appellant and the learned Additional Public Prosecutor for the respondents and we have also perused the records.

5. It is the positive case of the prosecution that the occurrence was on 24.03.2011 around 12 noon. The deceased was taken to Sri Padmanabha hospital at Colachal only on 25.03.2011 at 11 a.m. Thus, between 12 noon on 24.03.2011 and 25.03.2011 at 11 a.m., what happened to the deceased, after the alleged occurrence, is not known. At 11 a.m., on 25.03.2011, at the time of admission, the deceased was fully conscious. She told the Doctor that she had fallen from the motorcycle on 24.03.2011 around 5 pm near her house. This statement of the deceased is a dying declaration. This is quite contrary to the case, now projected by the prosecution. It is not explained to the Court as to what made the deceased to make such a statement to the Doctor.

6. P.Ws.1 to 3 have stated that they witnessed the occurrence on 24.03.2011 at 12 noon. But they did not whisper about the occurrence to anybody including the police, until the deceased died in the hospital. P.W.1 has stated that on 26.03.2011, after the death of the deceased, he made the complaint. Absolutely, there is no explanation as to why, between, 24.03.2011 and 26.03.2011, he did not make any complaint to the police. These three witnesses have, according to the case of the prosecution, kept silence for two full days. Absolutely, there is no explanation for the same. This conduct of P.Ws.1 to 3 is quite unnatural and the same is inconsistent with the theory put forward by the prosecution that they witnessed the occurrence. Thus, we do not find it difficult to believe P.Ws.1 to 3.

7. Then, comes the recovery of patiole on the confession of the accused. Absolutely, there is no evidence to prove the nexus between the patiole and the crime. Thus, the mere recovery of M.01 would not in any manner advance the case of the prosecution. Further, the motive for the occurrence has also not been established by the prosecution. At any rate, there is absolutely, no evidence, upon which, it can be safely held that it was this accused, who caused the death of the deceased. In our considered



view, the prosecution has failed to prove the case beyond reasonable doubts. Therefore, the appellant is entitled for acquittal.

8. In the result, the Criminal Appeal is allowed; the conviction and sentence imposed on the appellant are set aside and the appellant is acquitted of all charges. Fine amount, if any paid, shall be refunded to him. Bail bond shall stand terminated.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

- 1.The Mahila Fast Track Sessions Court,
Nagercoil, Kanyakumari District
- 2 The Principal District Munsif cum Judicial Magistrate,
Eraniel, Kanyakumari District
- 3 -Do-thro- The Chief Judicial Magistrate,
Kanyakumari District
- 4 The Superintendent of Police,
Kanyakumari District, Nagercoil
- 5 The Superintendent
Central Prison, Playamkottai
Tirunelveli District
- 6 The Inspector of Police
Colachal Police Station
Kanyakumari District at Nagercoil.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 8 The Section Officer,
Criminal Record Section,
Madurai Bench of Madras High Court,
Madurai

+1 cc to MR.K.PRABHU, Advocate Sr.No.57967

JUDGMENT MADE
CRIMINAL APPEAL No. (MD) .No.127 of 2015
30.09.2016